



STATE OF KANSAS

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July 27, 1984

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ATTORNEY GENERAL OPINION NO. 84- 77

Walter A. Hefner, Chairman
Shawnee County Civil Service Board
Room 201-A, County Courthouse
Topeka, Kansas 66603

Re: Counties and County Officers -- Employment Systems --
Civil Service System in Urban Area and Other Counties;
Enforcement of Rules

Synopsis: The Shawnee County Civil Service Board, established pursuant to K.S.A. 19-4303 et seq., may enforce rules adopted in accordance with its express statutory authority, either through expressly authorized administrative procedures, criminal process pursuant to K.S.A. 19-4327, or its implied enforcement authority via the inherent equitable powers of the district court. Cited herein: K.S.A. 19-4303; 19-4304; 19-4311; 19-4314; 19-4327; 19-4331.

* * *

Dear Mr. Hefner:

As Chairman of the Shawnee County Civil Service Board, and on behalf of the members of the board, you have requested an opinion on the question of how the board may enforce its rules, enacted pursuant to K.S.A. 19-4303 et seq.

K.S.A. 19-4303 et seq., authorizes the creation of a civil service board by a board of county commissioners to formulate and administer uniform personnel policies, rules and procedures for certain employees of sheriffs' offices in certain larger counties. (See K.S.A. 19-4304, 19-4311, 19-4314.) The civil service board members are appointed by the board of county com-

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missioners and do not receive a salary for service on the board. The powers and duties of such a board are specified in K.S.A. 19-4311. The board has the general responsibility to set up regulations for the purpose of carrying out the act and specific responsibility for adopting personnel regulations covering matters such as promotions, vacations, layoffs, leaves, procedures for changing compensation rates and "other conditions of employment."

Under K.S.A. 19-4311 the board also is charged with the responsibility of conducting hearings and hearing complaints by or against covered personnel for the purpose of demotions, suspensions or removal. The board has subpoena power with regard to such hearings. The board also may grant hearings to any covered employee who is dismissed by the sheriff. After such a hearing, the board approves or disapproves the action and has the power to order reinstatement of the dismissed employee. K.S.A. 19-4327. In addition, the board is specifically empowered to establish necessary rules to give effect to the act, and particularly to K.S.A. 19-4327.

You have enclosed copies of two rules passed by the board which establish procedures for the conduct of hearings authorized by 19-4327 and 19-4311. You ask what the board may do to enforce its rules under the act. The civil service board is, in effect, an administrative agency, charged by the legislature with the responsibility of administering the act. The legislature has specifically granted the board the power to adopt, modify and approve personnel regulations for certain employees of the sheriff's office. In addition, the board has the power to "supervise the enforcement and effect of this act." K.S.A. 19-4311(f).

Administrative agencies are creatures of statute, and their powers are dependent upon the statutes which authorize various functions. Thus any exercise of authority claimed by the agency must be warranted by the relevant authorizing statutes. Accordingly, the board possesses only such powers as have been conferred upon it by law, either expressly or by clear implication. See Woods v. Midwest Conveyor Co., 231 Kan. 763 (1982).

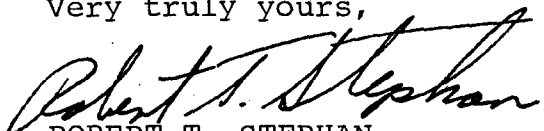
As noted, the board has the express authority to adopt regulations necessary to effectuate the act and the power to supervise its enforcement. In many cases, enforcement of a rule adopted by the board may be accomplished through the administrative procedures which the board is specifically empowered to pursue. For example, the board may investigate and hear matters pertaining to violations of personnel rules which result in demotion, suspension or removal of personnel. The board also may conduct hearings after the sheriff dismisses a covered employee and may, after such hearing and consideration, sustain


the dismissal or order reinstatement. In addition, the act specifically provides that any person who willfully violates the act or rules shall be guilty of a misdemeanor. K.S.A. 19-4331. Thus, in the case of willful violations of rules, the board may seek prosecution under this section through the appropriate offices.

In addition to these specific powers, the board, as a governmental agency, possesses implied powers to take such reasonable steps as may be necessary for the effective exercise of the express powers conferred and the discharge of the specific duties imposed. Edwards County Comm'rs v. Simmons, 159 Kan. 41, 53 (1944); State v. Younkin, 108 Kan. 634 (1921). Thus, while the statutes pertaining to the board fail to authorize certain specific types of enforcement mechanisms, i.e., through actions for damages or by imposition of a penalty, the board may be said to possess the implied power to enforce rules adopted in accordance with its express statutory authority. The inherent equitable powers of the district court are available for the enforcement of a regulation or to enjoin its violation. See generally, 2 Am.Jur.2d Administrative Law, §§ 312, 313, 314.

In conclusion, the Shawnee County Civil Service Board, established pursuant to K.S.A. 19-4303 et seq., may enforce rules adopted in accordance with its express statutory authority either through expressly authorized administrative procedures, criminal process authorized by K.S.A. 19-4327, or its implied enforcement authority via the inherent equitable powers of the district court.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary F. Carson
Assistant Attorney General