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November 3, 1986

ATTORNEY GENERAL OPINION NO. 86-154

Al Naes, Chairman
Kansas Law Enforcement Training Commission
The University of Kansas
Continuing Education Building
Lawrence, Kansas 66045-2602

Re: State Boards, Commissions and Authorities --
Law Enforcement Training Center; Training
Commission --Entitlement to Kansas Law
Enforcement Training Center Fund.

Synopsis: Kansas legislative appropriation acts do not
establish funding for the Kansas Law Enforcement
Training Commission; nor does the Kansas law
enforcement training act, K.S.A. 74-5601
et seq., authorize or otherwise entitle the
commission to any funds. Cited herein: K.S.A.
1985 Supp. 20-362, as amended by L. 1986, Ch.
146, §2; 28-172a, as amended by L. 1986, ch.
146, §3; K.S.A. 74-5601; 74-5603; 74-5614,
repealed by L. 1982, ch. 322, §12.

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Dear Mr. Naes:

As Chairman of the Kansas Law Enforcement Training
Commission (Commission) you request our opinion concerning
the commission's entitlement to the Kansas law enforcement
training center (center) fund and specifically, whether or
not the commission is empowered to fund staff members in
connection with certification hearings.

The Kansas law enforcement training center fund statute was enacted in 1978 (Chap. 323 §11); K.S.A. 74-5614. The statute indicated that moneys collected "shall be used exclusively (1) to defray the costs of operation of the training center and (2) for grants to training schools certified by the director. . ." (Emphasis added.)

However, the Kansas law enforcement training center fund is no longer in existence.

K.S.A. 74-5614 was repealed in 1982 (L. 1982, ch. 322, §12) and has not been re-enacted. Repeal of a statute is defined as "the termination of the effect of a statute as existing law by a later statute or constitutional provision." 50 Am.J. 1st, Stat. §§ 516 et seq. Repeal is also defined as "the annulment of a statute, whereby it ceases to have any existence, accomplished directly or expressly through a later statute or constitutional provision, or indirectly or impliedly by the enactment of a statute or the adoption of a constitutional provision which is repugnant to or inconsistent with the statute."

Oakland Paving Co. v. Hilton, 69 Cal. 479, 485, 11 P.

3. (Ballentine's Law Dictionary.) None the less, the Kansas legislature has provided funding for center by an appropriation act in each legislative session. The restriction on use for the appropriations act comes from an attached proviso and section 1 of each appropriation bill: "for the fiscal year ending June 30, 19___, appropriations are hereby made, restrictions and limitations are hereby imposed, and transfers, receipts, disbursements and acts incidental to the foregoing are hereby directed or authorized as provided in this act."

In the latest appropriation bill for the University of Kansas (L. 1986, ch. 34, §7) the Kansas legislature added a proviso to the use of the center's fund (Special Revenue Fund):

"Provided, that this appropriation may be used to cover the costs of tuition for students enrolled in the law enforcement training program in addition to costs of salaries and wages and other operating expenditures for the program."
(Emphasis added.)

K.S.A. 74-5603 states that the "purpose and function of such training center shall be the promotion and development

of improved law enforcement personnel and procedures . . . [and] offer programs and courses of instruction designed to fulfill this need."

The Kansas legislature does provide funding for the operation of other regulatory/licensing boards and commissions (Abstractor's Board of Examiners, Board of Accountancy, Board of Barber Examiners, Behavioral Sciences Regulatory Board, State Board of Healing Arts, Kansas State Board of Cosmetology, Kansas Dental Board, State Board of Mortuary Arts, Kansas Board of Examiners in Fitting and Dispensing of Hearing Aids, Board of Nursing, Board of Examiners in Optometry, State Board of Pharmacy, Kansas Real Estate Commission, Office of the Securities Commissioner of Kansas, State Board of Technical Professions and State Board of Veterinary Examiners) in appropriation bills passed each year (See, L. 1986, ch. 13).

Throughout the entire act, K.S.A. 74-5601 et seq., reference is made to the commission and its interaction with the training center or training center director. Nowhere in 74-5614 or in the appropriations proviso was the commission mentioned to be party to the funds of the center's fund.

The center's fund is only mentioned in K.S.A. 1985 Supp. 20-362, as amended, in which it is stated that moneys collected by the clerk of the court will be forwarded to the state treasurer, and in K.S.A. 1985 Supp. 28-172a, as amended, which authorizes the collection and provides that the docket fee shall include a sum for the center.

There is no statutory language recognizing, creating or describing the center's fund or restricting its use, other than the appropriation proviso.

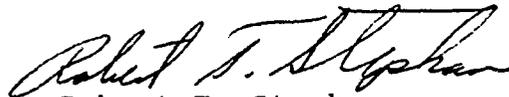
The K.L.E.T. commission is not entitled to funds from the center's operation.

The statute which addresses the powers and duties of the commission is found at K.S.A. 74-5607. That statute states the commission shall adopt rules and regulations necessary to carry out the provisions of K.S.A. 74-5616(c) concerning the procedure for suspension, revocation and denial. The statute does not give the commission the express power to contract, employ personnel, appoint staff members or expend funds.

The legal principle is well established that administrative agencies are "creatures of statute" and their power is dependent upon authorizing statutes; therefore, any exercise of authority claimed by the agency must come from within the statutes either expressly or by clear implication. There is no general or common-law power that can be exercised by an administrative agency. State ex. rel. Secretary of S.R.S. v. Fomby, 11 Kan.App.2d 138 at 141 (1986); Pork Motel, Corp. v. Kansas Department of Health and Environment, 234 Kan. 374, 378 (1983); Woods v. Midwest Conveyor Co., 231 Kan. 763 at 770; 1 Am.Jur.2d, Administrative Law §70, p. 866 (1982). Because no such powers are given to the commission, the commission may not assert them.

In conclusion, Kansas legislative appropriation acts do not establish funding for the Kansas Law Enforcement Training Commission; nor does the Kansas law enforcement training act, K.S.A. 74-5601 et seq., authorize or otherwise entitle the commission to any funds.

Very truly yours,



Robert T. Stephan
Attorney General



Brenda L. Braden
Deputy Attorney General

RTS:BLB:may