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ATTORNEY GENERAL OPINION NO. 87- 181

Mr. Dennis R. Taylor
Secretary of Human Resources
Department of Human Resources
401 S.W. Topeka Blvd.
Topeka, Kansas 66603-3182

Re: State Departments; Public Officers and Employees--
Public Officers and Employess; Public
Employer-Employee Relations--Application of Act to
Judiciary and Legislature

Synopsis: Based upon the rules of statutory construction and
the history and circumstances surrounding the
enactment of K.S.A. 75-4321 et seq., it is
our opinion that the public employer-employee
relations act does not apply to court personnel,
but legislative employees are included within the
scope of the act's provisions. Cited herein:
K.S.A. 20-162; K.S.A. 1986 Supp. 20-342; 20-345;
20-358; K.S.A. 20-359; K.S.A. 1986 Supp. 20-361;
K.S.A. 46-1213; 75-2935; 75-4321; 75-4322.

* * *

Dear Mr. Taylor:

As Secretary of the Kansas Department of Human Resources you
request our opinion regarding whether the public
employer-employee relations act, K.S.A. 75-4321 et seq.,
applies to the legislative and judicial branches of state
government in Kansas.

The public employer-employee relations act (act) provides the framework for public employee organization and public employer-employee negotiations. The purpose of the act is stated in K.S.A. 75-4321(b) as follows:

"Subject to the provisions of subsection (c), it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the state and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies." (Emphasis added.)

"Public employee" and "public employer" are defined by K.S.A. 75-4322 as follows:

"(a) 'Public employee' means any person employed by any public agency, except those persons classed as supervisory employees, professional employees of school districts, as defined by subsection (c) of K.S.A. 72-5413, elected and management officials, and confidential employees.

. . . .

"(f) 'Public agency' or 'public employer' means every governmental subdivision, including any county, township, city, school district, special district, board, commission, or instrumentality or other similar unit whose governing body exercises similar governmental powers, and

the state of Kansas and its state agencies."

The scope and application of the public employer-employee relations act has been summarize by the Kansas Supreme Court in Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA, 233 Kan. 801, 803, 804 (1983):

"The Act extends to all persons employed by the State of Kansas and its agencies, except supervisory employees, professional employees of school districts, elected and management officials, and confidential employees. The Act is administered by the five-member Public Employee Relations Board which is empowered to make rules and regulations, establish procedures for the prevention of improper public employer and employee practices, hold hearings and enforce the attendance of witnesses and the production of documents, conduct employee elections, and determine recognized employee organizations and hear and determine controversies concerning prohibited practices. . . ."

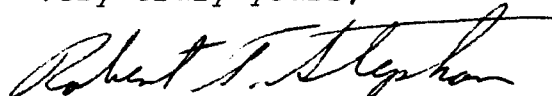
The act does not specifically include the judiciary or the legislature in its definition of "public agency" or "public employer," nor does it specifically include court or legislative personnel in its definition of "public employee." Arguably, however, court and legislative personnel are covered by the act because they are state employees. See K.S.A. 75-2935(1)(k) (court employees acknowledged as state employees in the unclassified service of the state civil service system); K.S.A. 1986 Supp. 20-361 (salaries of certain district court personnel paid by state); K.S.A. 1986 Supp. 20-358 ("county shall . . . provide . . . health services at least equal to insurance coverage provided to other state . . . employees. . . ." Emphasis added); K.S.A. 20-359; K.S.A. 46-1213; Attorney General Opinion No. 76-289. The foremost rule of statutory construction dictates that when a statute is susceptible of more than one interpretation, the legislative intent controls. Reeves v. Board of County Commissioners of Johnson County, 226 Kan. 397 (1979). In ascertaining legislative intent, the court may consider circumstances existing at the time of the statute's enactment. In re Estate of Reed, 233 Kan. 531, 541 (1983). In 1971 when the public employer-employee relations act

was enacted, most court personnel were employees of the county in which the court was located. Thus, court employees at that time could organize pursuant to the provisions of the act only if the local unit of government had elected to adopt its provisions. K.S.A. 75-4321(c). It was not until 1977 that these court personnel became state employees. L. 1978, ch. 108. Thus, the legislature could not have intended to include most court personnel within the definition of "public employee" at the time of enacting K.S.A. 75-4321 et seq., except when the local unit of government under which these people were employed had opted to come within the act's provisions.


Another rule of statutory construction is that old statutes must be read in light of later legislative enactments. State v. Kelly, 236 Kan. 555 (1985). Since 1977, though court employees have been identified by the legislature as state employees, court personnel matters have been recognized as matters to be handled administratively by the judicial branch pursuant to Article 3, Section 1 of the Kansas Constitution. See, e.g., K.S.A. 20-162; K.S.A. 1986 Supp. 20-345; 20-342. See also Kansas Judicial Study Advisory Committee, Recommendations for Improving the Kansas Judicial System, 19 W.L.J. 271 (1974). Thus, the legislature has allowed the judiciary almost complete autonomy in its handling of personnel matters which is consistent with an intent by the legislature to exclude court personnel from the provisions of the public employer-employee relations act. Accordingly, it is our opinion, based upon the rules of statutory construction and the above-cited history and circumstances surrounding the enactment of K.S.A. 75-4321 et seq., that its provisions do not apply to court employees.

Our analysis of the act's application to legislative employees, however, leads to the opposite conclusion. Legislative employees were state employees at the time of the act's enactment and there is no reason of which we are aware to believe that these employees were not intended to be included within the scope of the act's provisions.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General