



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 28, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 77

Kyle Smith
Counsel for the Law
Enforcement Training Commission
1620 S.W. Tyler
Topeka, Kansas

Re: State Boards, Commissions and Authorities--Law
Enforcement Training Center; Training
Commission--Qualifications of Applicant for
Training Course; Age

Synopsis: The Kansas law enforcement training act, K.S.A.
74-5601 et seq., does not currently require
that a person attending a training course be 21
years of age. However, a person cannot be
certified by the commission or perform law
enforcement functions until he or she reaches age
21. Cited herein: K.S.A. 1989 Supp. 74-5602;
74-5605; 74-5607a; 74-5616; 74-5616a; 74-5617;
K.S.A. 74-5618; K.S.A. 74-5605a, repealed L. 1985,
ch. 258, § 1; L. 1982, ch. 322, § 6; L. 1983,
chs. 256, 257.

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Dear Mr. Smith:

As counsel for the law enforcement training commission
(commission), you seek our opinion regarding qualifications
required of applicants to attend law enforcement training
courses. Specifically you question whether applicants must be
21 years of age or older to be in training.

The Kansas law enforcement training act, K.S.A. 74-5601 et seq., addresses age requirements in several of its provisions. K.S.A. 1989 Supp. 74-5616 provides that "[t]o be eligible for permanent appointment as a police officer or law enforcement officer, a person must first be certified to perform the function of law enforcement by the Kansas law enforcement training commission." One of the requirements for certification is that the person be at least 21 years of age. K.S.A. 1989 Supp. 74-5616(a)(1); K.S.A. 1989 Supp. 74-5616a(a)(1). Pursuant to K.S.A. 1989 Supp. 74-5617, "[e]very candidate for permanent appointment to a position as a police officer or law enforcement officer . . . shall have attained 21 years of age." Finally, K.S.A. 74-5618 provides that "[e]very police officer or law enforcement officer, as defined by K.S.A. 74-5602 and amendments thereto, shall have attained at least 21 years of age." K.S.A. 1989 Supp. 74-5602(e) defines law enforcement officer or police officer to include both full-time and part-time salaried officers, as well as those who are appointed or elected on a provisional basis pursuant to K.S.A. 1989 Supp. 74-5607a(c). Clearly in order to serve in a law enforcement capacity, i.e. to prevent or detect crime or enforce criminal or traffic law, an individual must be at least 21 years of age. A person cannot be certified by the commission or hired to perform law enforcement functions until he or she reaches 21 years of age.

It is not as clear, however, whether an individual must be a police officer or law enforcement officer, and therefore 21, to be in a training program under K.S.A. 74-5601 et seq. K.S.A. 1989 Supp. 74-5605 does not speak to it and other statutes may be interpreted in two ways. When ambiguity exists and legislative intent is not clear on the face of the statutes, it is appropriate to look to the history and circumstances surrounding development of the statutes. Appeal of Sterling Drilling Co., 9 Kan.App.2d 108, 109 (1983); State v. Phifer, 241 Kan. 233, 238 (1987).

In 1982, pursuant to an interim study recommendation, K.S.A. 74-5605 was amended as follows:

"Every applicant for admission to the basic class a course for police officers or law enforcement officers conducted by the training center must shall be a permanent or temporary member of a police officer or law enforcement agency officer as described defined in subsection

(e) of K.S.A. 74-5602(e) 74-5602
and amendments thereto. Prior to
admission he must to a course
conducted at the training center or at a
certified state or local law enforcement
agency, the applicant shall furnish to
the associate director a statement of
certification by his from the
applicant's department head
indicating certifying the applicant's
fulfillment of the following requirements:

. . . .

"(b) At least 21 years of age. . . ."
L. 1982, ch. 322, § 6 (Underscoring and
strike type represent legislative
amendments.)

The report of the interim committee noted that this provision
was added to ensure that persons in the training programs were
at least 21 years old. Report on Kansas Legislative Interim
Studies to the 1982 Legislature, Proposal No. 12 - Law
Enforcement 267, 289.

In 1983, K.S.A. 74-5605 was again amended. 1983 Substitute
for Senate Bill No. 277 contained the following amendment:

"Every applicant for admission to a course
for police officers or law enforcement
officers conducted by the training center
shall be a ~~police officer or law~~
~~enforcement officer as defined in~~
~~subsection (e) of K.S.A. 74-5602 and~~
~~amendments thereto an employee of a~~
state, county or city law enforcement
agency or a railroad policeman appointed
pursuant to K.S.A. 66-524 and amendments
thereto. Prior to admission to a course
conducted at the training center or at a
certified state or local law enforcement
agency, the applicant shall furnish to the
associate director a statement from the
applicant's department head certifying the
applicant's fulfillment of the following
requirements. The applicant:

. . . .

"(b) is a least 21 years of age.
. . ." L. 1983, ch. 256, § 4.
(Underscoring and strike type represent
legislative amendments.)

1983 Senate Bill No. 208 [L. 1983, ch. 257, codified at K.S.A. 74-5605a) also amended K.S.A. 74-5605 by deleting the age requirement for applicants and replacing it with what is now K.S.A. 74-5618 requiring all police officers and law enforcement officers to be at least 21 years of age. [Eventually, K.S.A. 74-5605a was repealed as duplicative of K.S.A. 74-5605. L. 1985, ch. 258, § 1. All of the statutes which currently contain age requirements were enacted in 1983.] Captain Roger Thebo and Mr. Lauren Taylor testified before both the House and Senate committees on 1983 Senate Bill No. 208 that the change was needed to allow the cadet program in Kansas City, Kansas to continue training persons under 21 years of age. It was stated that no one would be certified or begin performing law enforcement functions until attaining the age of 21. Minutes, Senate Committee on Federal and State Affairs, Feb. 21, 1983; Minutes, House Committee on Federal and State Affairs, March 22, 1983. Captain Thebo testified before the Senate committee that he felt the amendments in 1983 Substitute for Senate Bill No. 277 would take care of his concerns and reasons for seeking the amendment in Senate Bill No. 208. Minutes, Senate Committee on Governmental Organization, April 5, 1983.

The 1983 legislative amendments, together with the testimony of Captain Thebo and Lauren Taylor, lead us to conclude that the law enforcement training act does not currently require applicants or trainees to be 21 years of age, although they must be 21 before they may be certified or perform law enforcement functions. Our conclusion is supported by statements of the Kansas Supreme Court in the case of State v. Winkel, 243 Kan. 570, 571, 572 (1988):

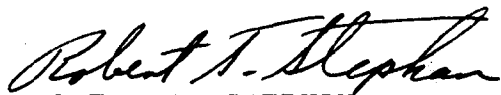
"There is no requirement under [K.S.A. 1987 Supp. 74-5605] that a person engaged in a training course be 21 years of age. . . . Kansas statutes do not require a trainee to have attained the age of 21 years during his training course."

We realize that this language is merely dicta and carries no precedential weight, but we believe it to be indicative of how the court would rule were the issue before it.

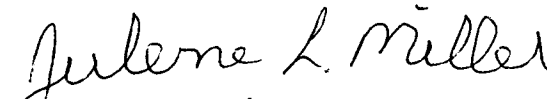
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In conclusion, the Kansas law enforcement training act, K.S.A. 74-5601 et seq., does not currently require that a person attending a training course be 21 years of age.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm