



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 2

Robert A. Anderson, Director  
Workers' Compensation Division  
Kansas Department of Human Resources  
600 Merchants Bank Tower  
Topeka, Kansas 66612-1227

Re: Labor and Industries--Workers' Compensation--Medical  
Compensation; Powers; Advisory Panel Members

Synopsis: The workers' compensation advisory panel  
established pursuant to K.S.A. 44-510, as amended  
by L. 1990, ch. 183, sec. 2 is authorized to  
conduct business in the absence of a member whose  
appointment is being challenged. Cited herein:  
K.S.A. 1989 Supp. 44-510, as amended by L. 1990,  
ch. 183, § 2; K.S.A. 77-201.

\* \* \*

Dear Mr. Anderson:

As director of the division of workers' compensation, Kansas  
department of human resources, you inquire whether the  
workers' compensation advisory panel may conduct business in  
the absence of a member whose appointment is being challenged  
by a lawsuit.

Subsection (a)(3)(b) of K.S.A. 44-510, as amended by L. 1990,  
ch. 183, sec. 2 creates an eight member board charged with  
assisting the workers' compensation director in establishing  
maximum medical fees schedules. The statute requires the  
secretary of human resources to appoint three of the eight  
members. One of the three members appointed must be a

representative of entities providing vocational rehabilitation services pursuant to K.S.A. 1989 Supp. 44-510g. You indicate that one of the secretary's appointments has been challenged by a lawsuit seeking removal on the ground that the appointee does not represent vocational rehabilitation vendors.

A perusal of the enabling statute creating the advisory panel does not address your question. For this reason we look to K.S.A. 77-201 involving statutory construction and to the pertinent Fourth clause. It states:

"In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute:

. . . .

"Fourth. Words giving a joint authority to three or more public officers or other persons shall be construed as given [sic] such authority to a majority of them, unless it be otherwise expressed in the act giving the authority."

In its most current case interpreting the above statute the Kansas Supreme Court has depicted it as sufficiently complete and providing in substance that if the legislature intends the full board to act, it must be expressed in the enabling act granting the board's authority. In re Application of Murray, 193 Kan. 535, 540 (1964). The court also cautions that each particular case must be considered on its own facts. 193 Kan. at 539.

Our facts involve an advisory panel consisting of an eight members, fully constituted in that all eight members have been appointed. There are no vacancies. The court challenge involves the question of whether the appointee being challenged is qualified to represent the interests mandated by statute, that of vocational rehabilitation vendors. The enabling statute establishes a panel whose appointees will act as a body, not as individuals, to establish or approve reasonable medical fees paid to injured workers.

Robert A. Anderson

Page 3

After perusal of the enabling statute we find that our conclusion is not inconsistent with the legislature's intent. Considering the panel's purpose and the absence of a statute providing otherwise it is our opinion that the workers' compensation advisory panel is authorized to conduct the business of the board absent a member whose appointment is being challenged. We note that the enabling statute requires one member to represent the interests of vocational rehabilitation vendors, but the statute does not require unanimous action or participation. See Coggins v. Public Employee Relations Board, 2 Kan.App.2d 416, 421 (1978), review denied by the Supreme Court, 224 Kan., cl. xxxvii (September 13, 1978).

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Guen Easley  
Assistant Attorney General

RTS:JLM:GE:jm