



STATE OF KANSAS

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September 17, 1991

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ATTORNEY GENERAL OPINION NO. 91- 111

Wayne K. Westblade  
Hamilton County Attorney  
P.O. Box 870, 118 N. Main  
Syracuse, Kansas 67878

Re: State Boards, Commissions and Authorities--Public  
Employees Retirement Systems; Kansas Public  
Employees Retirement System--Requirement to Become  
Affiliated When Municipal Consolidations Occur

Synopsis: A governmental entity resulting from the merger or  
consolidation of two political subdivisions or  
instrumentalities of a county is required to  
maintain the membership in KPERS for those  
employees who were previously employed by a  
political subdivision or instrumentality which was  
a participating employer under KPERS. The  
governing body of the governmental entity is also  
required to adopt a resolution for affiliation with  
KPERS. Cited herein: K.S.A. 19-2106; 19-4601;  
74-4929; 80-2550.

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Dear Mr. Westblade:

As attorney for Hamilton county, you request our opinion  
regarding whether the employees of a county entity created by  
the merger of the Hamilton county rest home and the Hamilton  
county hospital are required to become members of the Kansas  
public employees retirement system (KPERS).

Hamilton county has, pursuant to K.S.A. 19-2106 et seq., established a county rest home; a county hospital has been established pursuant to K.S.A. 19-4601 et seq. The employees of the rest home, together with other employees of Hamilton county, are members of KPERS. The employees of the hospital, however, are not members of KPERS, their retirement being covered by a private retirement plan. The board of county commissioners has recently adopted a resolution which would merge the rest home into the hospital and presumptively establish a health care facilities and services hospital district pursuant to K.S.A. 80-2550 et seq. You ask whether K.S.A. 74-4929 requires that all employees of the entity created by the resolution become members of KPERS.

K.S.A. 74-4929 states:

"When two (2) or more cities, counties, townships, political subdivisions or instrumentalities of any one or several of the aforementioned are consolidated, merged or otherwise combined. . . , and one or more of the governmental entities being consolidated, merged or otherwise combined . . . is a participating employer under [KPERS], any resulting governmental entity shall assume by operation of this act the continuing retirement obligation toward those employees of the previous entity or entities that are continued on the payroll of any such resulting governmental entity. The governing body or chief officer of any such resulting entity shall forthwith adopt the resolution for affiliation provided for in K.S.A. 74-4910 to provide retirement benefits for any other employees who were not previously members of the system, commencing January 1 of the year immediately following such consolidation, merger [or] combination . . . , and said date shall be the entry date applicable to said other employees employed on said date."

The fundamental rule of statutory construction is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute. Unified School District No. 279 v. Sec'y of Kansas Department of Human Resources,

247 Kan. 519, 524 (1990). In construing a statute, courts are not justified in disregarding the clear intent of the statute appearing from its plain and unambiguous language. Boaldin v. University of Kansas, 242 Kan. 288, 291 (1987). When a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Szoboszlay v. Glessner, 233 Kan. 475, 478 (1983).

Under the provisions of K.S.A. 74-4929, a governmental entity resulting from the merger or consolidation of two political subdivisions or instrumentalities of a county is required to maintain the membership in KPERS for those employees who were previously employed by a political subdivision or instrumentality which was a participating employer under KPERS. The governing body of the governmental entity is also required to adopt a resolution for affiliation with KPERS, thereby itself becoming a participating employer under KPERS. Therefore, the governmental entity resulting from the merger of the Hamilton county rest home and the Hamilton county hospital is required to maintain the membership in KPERS of those employees previously employed by the rest home. The governmental entity resulting from the merger is also required to become a participating employer under KPERS, making those employees previously employed by the county hospital participating members of KPERS as of January 1 of the year immediately following the merger.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Richard D. Smith  
Assistant Attorney General

RTS:JLM:RDS:jm