



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 37

The Honorable Phil Martin
State Senator, Thirteenth District
State Capitol, Room 504-N
Topeka, Kansas 66612

The Honorable Ed McKechnie
State Representative, Third District
State Capitol, Room 281-W
Topeka, Kansas 66612

The Honorable Robert Grant
State Representative, Second District
State Capitol, Room 273-W
Topeka, Kansas 66612

Re: Elections--Registration of Voters--Deputy County
Election Officers; Appointment; Additional Places
of Registration Permitted; Door-to-Door Voter
Registration

Synopsis: Pursuant to K.S.A. 25-2303, the county election officer has the authority to appoint any qualified elector of the county to serve as deputy county election officer provided the county election officer determines that the qualified elector possesses similar character and trustworthiness as that commonly associated with those persons who are city clerks of any city or personnel of any public high school, public library, or public institution of higher education. The intent of the legislature as expressed in K.S.A. 25-2313 is to allow designation of fixed places to which persons may go to register to vote. The statute does not authorize registration of voters to be conducted

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door-to-door. Cited herein: K.S.A. 25-2303;
25-2310; K.S.A. 1991 Supp. 25-2311; K.S.A.
25-2312; 25-2313; K.A.R. 1991 Supp. 7-23-4.

* * *

Dear Senator Martin, Representatives McKechnie and Grant:

As legislators for your respective districts, you request our opinion regarding whether a county election officer possesses certain authority. Specifically, you ask whether a county election officer has the authority to appoint any qualified elector of the county to serve as deputy county election officer. You also ask whether a county election officer or deputy county election officer may conduct voter registration in a door-to-door manner.

The interpretation of a statute is a question of law and it is the function of the court to interpret the statute to give it the intended effect. U.S.D No. 279 v. Sec'y of Kansas Dept. of Human Resources, 247 Kan. 519, 524 (1990). The fundamental rule of statutory construction is that the purpose and intent of the legislature govern when that intent can be ascertained from the statute. Id. at 527. 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. State v. Coley, 236 Kan. 672, 675 (1985).

K.S.A. 25-2303 states that the officer responsible for administering the provisions of the act regarding registration of voters is the county election officer. Subsection (b) of the statute designates those city clerks who are to be appointed as deputy county election officers. The statute then provides:

"(c) Deputy county election officers shall maintain records and perform duties under the provisions of this act only in the manner prescribed by the county election officer. County election officers may appoint such deputy county election officers as they deem appropriate, including but not limited to the city clerk of any city, personnel in any public high school, any public library or public institution of higher

education, in addition to those required to be appointed under the provisions of this section." K.S.A. 25-2303 (emphasis added).

It is clear from the statute that a county election officer may, as he or she determines appropriate, appoint persons to serve as deputy county election officers. Within the provisions of the statute is a list of persons who may be appointed as deputy county election officers. One of the common rules of statutory interpretation is that the mention or inclusion of one thing implies the exclusion of others. State v. Wood, 231 Kan. 699, 701 (1982). However, the statute clearly states that the county election officer is not limited to selection of those persons set forth in the statute. The list provided is not intended to be all inclusive; rather, it provides examples of the types of persons who may be appointed to serve as deputy county election officers. Therefore, the county election officer has the authority to appoint any qualified elector of the county to serve as deputy county election officer provided the county election officer determines that the qualified elector possesses similar character and trustworthiness as that commonly associated with those persons who are city clerks of any city or personnel of any public high school, public library, or public institution of higher education.

Pursuant to K.S.A. 1991 Supp. 25-2311, "[c]ounty election officers shall provide for the registration of voters at one or more places. . . ." Places of registration may be located in the main office building of the county government and the main offices of the city government. K.S.A. 25-2312. "County election officers may provide for additional places of registration. Such additional places may be located other than in buildings in the event such places are determined to be suitable by the county election officer." K.S.A. 25-2313 (emphasis added).

In determining legislative intent, courts are not limited to a mere consideration of the language employed but may properly look into the historical background of the enactment, the circumstances attending and subsequent to its passage, the purposes to be accomplished and the effect the statute may have under the various constructions suggested. Joe Self Chevrolet, Inc. v. Board of County Comm'rs of Sedgwick County, 247 Kan. 625, 633 (1990). Therefore, in determining legislative intent, it is proper to consider the

circumstances leading to the adoption in 1982 of an amendment to K.S.A. 25-2313.

As originally enacted, K.S.A. 25-2313 authorized county election officers to "provide for additional places of registration during periods when it is anticipated a large number of persons may wish to register." In Attorney General Opinion No. 80-263, it was opined that K.S.A. 25-2313 (Ensley 1979) did not permit the designation of a "motor vehicle" as an additional place of voter registration. The opinion provides that "[a]pplication of established rules of statutory construction discloses a legislative intent that eligible voters be apprised with specificity as to the times and places of registration, requiring a finding that such additional places of registration must be buildings to which the public has access." Attorney General Opinion No. 80-263. In the text of the opinion, it is stated:

"Although it is arguable that certain types of vehicles situated at fixed locations might accommodate the anticipated increase in the number of registrants, while satisfying the statutorily-recognized need for specificity in the places of registration, we decline to read such provisions into the statute without benefit of clear legislative intent to that effect." Id.

Subsequent to issuance of Attorney General Opinion No. 80-263, the legislature provided such clear legislative intent through its amendment in 1982 of K.S.A. 25-2313. Therefore, a county election officer may designate as an additional place of registration a place other than in a building.

While the legislature provides clear indication that it does not limit the designation of places of registration to be in buildings, the 1982 amendment did not affect or alter the intent of the legislature that eligible voters be apprised with specificity as to the times and places of registration. K.S.A. 25-2312 and 25-2313 continue to authorize designation of places of registration. Also, K.S.A. 25-2310 continues to obligate the county election officer to "cause publication . . . of a notice of places and dates for registration and the closing thereof. . . ." The form of the notice must follow the form prescribed in K.A.R. 1991 Supp. 7-23-4, and include the dates, times and places of registration. The intent of the legislature is to allow designation of fixed places to

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which individuals may go to register to vote. The effect of the 1982 amendment to K.S.A. 25-2313 is to permit such places to be located in temporary or mobile structures at a fixed location. K.S.A. 25-2313 does not authorize registration of voters to be conducted door-to-door.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm