

May 8, 1975

Dr. Robert J. Fowks  
Professor of Law  
Washburn University School of Law  
Topeka, Kansas 66621

Dear Dr. Fowks:

The Attorney General of Kansas issued an opinion dated April 16, 1975, concerning a petition for unit determination. The petition was filed by the Kansas Higher Education Association on behalf of certain employees of Washburn University. A copy of that opinion is enclosed.

In light of this, the Public Employee Relations Board at its meeting Thursday, April 17, 1975, instructed me to advise interested parties that the Board has no jurisdiction in this matter until such time as the Washburn University Board of Regents votes to bring the employees under the Public Employer-Employee Relations Act.

I trust that this opinion will answer most of your questions, however, if you would like further information, please contact us.

Thank you very much.

Sincerely,

Jerry Powell  
Executive Director

JP:tb  
Enclosure

75-UDC-3-1975

STATE OF KANSAS

Public Employee  Relations Board

701 JACKSON—OFFICES 202-204  
TOPEKA, KANSAS 66603

ROBERT F. BENNETT  
GOVERNOR

ELDON V. DANENHAUER, *Chairman*  
WILLIAM B. McCORMICK  
ALAN L. NEELLY  
NATHAN W. THATCHER  
ARTHUR J. VEACH

JERRY POWELL  
*Executive Director*

April 22, 1975

Mr. Victor J. Salem  
Executive Secretary  
Kansas Higher Education Association  
715 West Tenth Street  
Topeka, Kansas 66612

RE: Case UDC 3-1975 filed March 13, 1975 - Petition  
for Unit Determination filed by Kansas Higher  
Education Association in behalf of certain employees  
of Washburn University, Topeka, Kansas

Dear Mr. Salem:

We have enclosed a copy of the Attorney General's opinion dated  
April 16, 1975, relative to the above referenced case.

In light of the opinion, the Public Employee Relations Board, at  
its meeting Thursday, April 17, 1975, instructed me to advise you  
that the Board has no jurisdiction in this matter until such time  
as the Washburn University Board of Regents votes to bring the  
employees under the Public Employer-Employee Relations Act.

I trust that this opinion will adequately clarify the matter for you.  
However, if you have any questions, please contact this office.

Thank you for your cooperation in this matter.

Sincerely,

Jerry Powell  
Executive Director

JP:tb  
Enclosure: (1)



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

APR 17 1975

CURT T. SCHNEIDER  
Attorney General

April 16, 1975

Mr. Jerry Powell  
Executive Director  
Kansas Public Employees Relations Board  
701 Jackson  
Topeka, Kansas

Dear Jerry:

You have requested my opinion as the Board's attorney relative to the status of Washburn University of Topeka under the PEERA.

You state that the governing body of the City of Topeka some time ago elected under the provisions of K.S.A. 75-4321(c) to bring the City under the act.

The statute provides in pertinent part:

"(c) The governing body of any public employer, other than the state and its agencies, by a majority vote of all the members may elect to bring such public employer under the provisions of this act, and upon such election the public employer and its employees shall be bound by its provisions from the date of such election. Once an election has been made to bring the public employer under the provisions of this act it continues in effect unless rescinded by a majority vote of all members of the governing body. No vote to rescind shall take effect until the termination of the next complete budget year following such vote."

Mr. Jerry Powell  
April 16, 1975  
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The Board has properly strictly construed this requirement since it's establishment. The question arises whether the election of the city obligates the university under the act or whether an election by the university board of regents, established pursuant to K.S.A. 1974 Supp. 13-13a04, is requisite before the obligation attaches to the university.

I have reviewed in some detail the statutes relative to the establishment and creation of the university.

K.S.A. 13-13a03 provides in pertinent part:

"The management and control of said municipal university shall be vested in a board to be known as the board of regents of the municipal university. . ."

K.S.A. 13-13a09 provides in part:

"The board of regents so constituted shall have power to prescribe such rules, bylaws and regulations as may be most expedient for the board and for the government of the municipal university, its faculty, instructors, other employees and all students attending the university subject to the existing laws of the state and of the United States."

K.S.A. 13-13a11 provides:

"Such board of regents shall be vested with all powers, authority and control belonging to or vested in said municipal corporation with respect to the management of the estate, property and funds given, transferred, covenanted or pledged to such municipal corporation in trust or otherwise for such municipal university."

K.S.A. 13-13a12 provides in part:

"The board of regents of said municipal university shall have power to employ a president of the municipal university, who shall be the chief executive officer of the board and of the municipal university; to employ all teachers, administrative assistants and other employees necessary for the maintenance of said municipal university and the discharge of its functions; and to fix the salary or compensation of each."

Mr. Jerry Powell  
April 16, 1975  
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K.S.A. 13-13a16 provides in part:

"The board of regents of said municipal university shall have the power to determine all questions of departments or schools to be established within said municipal university, all courses to be offered, degrees to be conferred, all questions of organization or discipline, and the fees or charges to be paid by those availing themselves of the privileges or opportunities of said university, and to delegate the execution of such details as said board may see fit to the duly authorized agents of said board."

K.S.A. 13-13a19 provides:

"All other powers and privileges necessary for the discharge of the functions of said municipal university which are not herein prescribed or limited are hereby granted, providing they are not in conflict with other specific legislation. The provisions of this act and all grants of power, authority or rights herein made to cities adopting the provisions of such act and to boards of regents created under the provisions of this act shall be liberally construed and all incidental powers necessary to carry into effect the provisions of this act, are hereby expressly granted to and conferred upon any city adopting the provisions of this act or any board of regents created pursuant to the adoption of its provisions."

Based on the foregoing, I must conclude that the board of regents, not the governing body of the City of Topeka is the appropriate body to make the election under the act.

A further question arises relative to whether the university as a recipient of state funds (K.S.A. 72-6501, et seq.) thereby, for purposes of the act, becomes a "state agency" automatically under its provisions. Some credibility is further added to this position by the fact that the state board of regents appoints one member to the board of regents of the university.

Mr. Jerry Powell  
April 16, 1975  
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In light of the statutory scheme heretofore outlined establishing the university board of regents as an extremely autoumous entity, exercising a wide scope of discretion in all areas of the universities' activity, I conclude that such a conclusion would strain the purpose and intent of the PEERA. Accordingly, the university board of regents must, in my opinion, formally elect by resolution to come under the terms of the act.

I am hopeful this will be of assistance.

Sincerely yours,

CURT T. SCHNEIDER  
Attorney General

BY:  
DONALD R. HOFFMAN  
Assistant Attorney General

DRH:en

MAR 13 1975

P E T I T I O N

- Employer
- Employee Organization
- Employees (must be signed by five employees)

Do Not Write In This Space

Case No. UDC-3-1975

Date Filed MAR 13 1975

INSTRUCTIONS: File an original and five copies of this Petition to the Public Employee Relations Board, 701 Jackson, Rms 204-206, Topeka, Kansas 66603 by Certified mail. One copy shall be served on each party named in the Petition and proof of service shall be returned to the Board. If more space is required for any item, attach additional sheets, numbering them accordingly.

The Petitioner alleges that the following circumstances exist and requests that the Public Employee Relations Board proceed under its proper authority.

1. Purpose of this Petition (Check appropriate box)

- Unit Determination (UD)
- Unit Determination and Certification (UDC)

2. Name and Address of Petitioner Kansas Higher Education Association  
(Affiliation, if any)  
715 West 10th, Topeka, Kansas 66612 Phone 232-8271

3. Name and Address of Employer Washburn  
University of Topeka Phone 235-5341

4. Employer Representative to Contact President John W. Henderson  
Phone 235-5341

5. Type of Establishment Municipal University

6. Description of unit alleged to be appropriate (be complete and specific, using job titles):

INCLUDE: See attached

EXCLUDE:

6a. Number of employees in unit 155

7. If filing for Unit Determination & Certification, is this Petition supported by 30% or more of the employees in the unit?

YES  NO

7. Is there agreement by all parties on the appropriate unit?

YES  NO

8. Give statement to the effect the governing body of the public employee is under the provisions of the Public Employer-Employee Relations Act either by virtue of the public employer being with the state or one of its agencies, or if not with the state or a state agency, that said public employer has elected to come under the provisions of said Act, and include evidence to that effect.

No information

Is there a work stoppage or picketing in progress at the establishment involved? YES  NO  If YES, state date of work stoppage and number of employees involved \_\_\_\_\_

0. Was an appropriate unit been determined by the Public Employee Relations Board? YES  NO  If YES, attach details of unit.

1. If Petitioner is representative in behalf of employee organization, is that representative duly licensed under the laws of the state of Kansas? YES  NO

2. Name(s) of other persons or employee organizations, known to Petitioner, who claim to represent any employees, or other employee organizations known to have an interest in representing employees in the alleged appropriate unit: (If none, so state)

Name	Address	Affiliation
None		

Include a clear and concise statement of any other relevant facts:

Note: Any answer to this Petition is to be filed with the Public Employee Relations Board within seven days after receipt of said Petition. The Board will consider failure to answer Petition as an admission of the allegations of said Petition, particularly the Unit Determination.

DECLARATION

I declare that I have read the above Petition and that the statements herein are true to the best of my knowledge and belief.

Kansas Higher Education Association

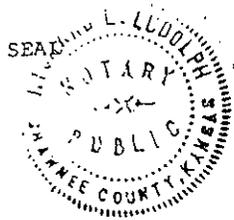
Petitioner & Affiliation, if any.

By [Signature] Executive Secretary  
Representative or Person Filing Title, if any

Date March 11, 1975

Subscribed and sworn to before me this 11 day of March, 1975.

[Signature]  
Notary Public



My commission expires July 11, 1976