



# LAW WISE

PUBLISHED BY THE KANSAS BAR ASSOCIATION

APRIL 2013

Editor: Kathryn A. Gardner, J.D., and Assistant Editor: Sarah Muehler

Coordinators: Hon. G. Joseph Pierron Jr.; Beth Warrington & Ryan Purcell, Kansas Bar Association



Greetings from the Kansas Bar Association (KBA).  
Welcome to this edition of *Law Wise* and the sixth edition of the 2012-2013 school year.

## IN THIS ISSUE

Welcome.....	1
Calendar of Events.....	1
The Executive Branch – Kansas.....	1
The Executive Branch – United States.....	2
Lesson Plan – For the President, All in a Day’s Work.....	5
Terrific Technology for Teachers.....	5

## WELCOME

Welcome to our final edition of *Law Wise* for this school year. This edition continues the theme of separation of powers by focusing on the executive branch.

The articles distinguish the executive branch in Kansas from the federal executive branch, examine the source of the president’s powers, list various powers the president possesses, discuss executive orders generally, and reproduce an Executive Order relating to education. We also includes a great lesson plan from iCivics that’s all inclusive – ready for you to use in your classroom.

Speaking of the executive branch, did you see that Gov. Sam Brownback recently signed into law House Bill 2019, discussed in the February issue of *Law Wise*, regarding the manner in which we select Court of Appeals judges in Kansas? Court of Appeals judges will now be selected by the governor contingent on confirmation by the Senate. Kansas Supreme Court justices will continue to be selected by the existing process, absent an amendment to the Kansas Constitution.



## THE EXECUTIVE BRANCH – KANSAS –

Source: <http://bit.ly/14hsudC>

## CALENDAR OF EVENTS

**May 9-11, 2013** National Mock Trial Competition (Indianapolis, Ind.)



The Constitution of the State of Kansas (1861) was patterned on the style and form of the Constitution of the United States. The authors of Kansas’ Constitution also followed precedent or the guidelines for how other states’ constitutions had been designed. In many ways, the Kansas or Wyandotte Constitution followed very closely the federal model to establish the three branches of government within this state. However, one of the most significant differences between the United States Constitution and its component in Kansas is the make-up of the executive branch of government. Typically, the executive branch is often understood to be the office of the chief executive, in this case the governor, and to no one else. However, the authors of the Kansas Constitution designed the executive branch as the “Executive Department” and included not only the governor and lieutenant governor, but also the secretary of state and the attorney general. The department was so designated because of precedents set by other states and because of the impact these offices had on “Bleeding Kansas” (<http://bit.ly/158kefv>) on the territorial government.

Though these two offices were included in the state constitution, supreme authority of the executive department lays with the governor; the

lieutenant governor, secretary of state, and attorney general must report to the governor on official matters prior to each legislative session. The governor is responsible for relating information from the executive department to the state legislature, and for setting the agenda and issues for the state legislators to address during a legislative session. The governor has the power to enact laws with his or her signature or to veto all or part of bills to return to legislators. Further, the governor has the power to close regular legislative sessions to encourage law makers to make progress, and the governor has the authority to call special sessions of the state legislature. He or she is the commander-in-chief of the state militia or Kansas National Guard, and may call them up to defend the state during invasion, or to assist during national disasters. The governor may also issue pardons to convicted criminals. However, the governor cannot make laws, levy taxes, or administer justice in the state.

The lieutenant governor's role is decided by the governor. The lieutenant governor no longer holds the position of

president of the Kansas Senate. Instead, the lieutenant governor works with state commissions and on issues that are most important to the governor. In the event that the governor cannot perform his or her duties, the lieutenant governor takes on the role of the governor. The secretary of state is chiefly responsible for elections and to ensure that elections are fair and that there is no voter fraud. The attorney general is the chief law enforcement official in the state and works to assist the governor in the execution of state laws and the obedience of federal laws. Each of the members of the executive department serves a four-year term. The governor may not serve more than two consecutive four year terms. Most of the state agencies are a part of the executive branch of government and the secretaries and executive directors serve at the pleasure of the governor.

The offices of the governor and the lieutenant governor are housed in the Kansas State Capitol in Topeka. The offices of the attorney general and secretary of state are housed in the Memorial Building in Topeka. ■

## THE EXECUTIVE BRANCH — UNITED STATES —

Source: <http://1.usa.gov/Zelzgy>

Where does the president get his power? From the U.S. Constitution. Here are several provisions establishing the limits of his power.

### From Article 2 of the United States Constitution

#### Section 1

The executive Power shall be vested in a President of the United States of America. ...

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

#### Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States ...

#### Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; ... he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

### From Article 1, Section 7 of the United States Constitution

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it ...

### WHAT POWERS DOES THE PRESIDENT HAVE?

The following presidential powers are listed in the constitution: to carry out the laws; to uphold the constitution; to serve as commander in chief of the military; to ask his advisors who lead parts of the government for their opinion on different issues; to pardon someone for a crime (which gets them out of jail or stops the death penalty); to enter into treaties with other countries (with Senate approval); to choose new Supreme Court justices (with Senate approval); to make recommendations to Congress about what bills to work on; to update Congress on how things are going in the country; and to sign (approve) or veto (reject) bills from Congress.

### CAN THE PRESIDENT MAKE LAWS?

No, that is a job for the legislative branch. The president has the power, however, to issue executive orders. But "[t]he President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself." *Youngstown*

*Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). An executive order without congressional or constitutional authority is unconstitutional. *Id.* Executive orders are effective only against federal agencies or federal officers, agents, or employees. Executive orders may be issued for any purpose ranging from the trivial to overarching national policy. President Washington used them to review cabinet level correspondence. President Lincoln issued an executive order to suspend the writ of habeas corpus and another to emancipate the slaves in the rebellious states. President Kennedy used executive orders to fight racial discrimination. President Obama issued 147 Executive orders from 2009–2012. See <http://www.archives.gov/federal-register/executive-orders/obama.html>.

**Here's one example of an executive order relating to education.** Do you think it's within the president's power to make this order?

### **Executive Order 13532 of February 26, 2010**

#### **Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities**

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to advance the development of the Nation's full human potential and to advance equal opportunity in higher education, strengthen the capacity of historically black colleges and universities to provide the highest quality education, increase opportunities for these institutions to participate in and benefit from Federal programs, and ensure that our Nation has the highest proportion of college graduates in the world by the year 2020, it is hereby ordered as follows:

#### **Section 1. Policy.**

Historically black colleges and universities (HBCUs) have made historic and ongoing contributions to the general welfare and prosperity of our country. Established by visionary leaders, America's HBCUs, for over 150 years, have produced many of the Nation's leaders in business, government, academia, and the military and have provided generations of American men and women with hope and educational opportunity. The Nation's 105 HBCUs are located in 20 States, the District of Columbia, and the U.S. Virgin Islands and serve more than 300,000 undergraduate and graduate students. These institutions continue to be important engines of economic growth and community service, and they are proven ladders of intergenerational advancement for men and women of all ethnic, racial, and economic backgrounds, especially African Americans. These institutions also produce a high number of baccalaureate recipients who go on to assume leadership and service roles in their communities and who successfully complete graduate and professional degree programs.

#### **Sec. 2. White House Initiative on HBCUs.**

(a) *Establishment.* There is established the White House Initiative on Historically Black Colleges and Universities (Initiative), to be housed in the Department of Education (Department).

(b) *Mission and Functions.* The Initiative shall work with executive departments, agencies, and offices, the private sector, educational associations, philanthropic organizations, and other partners to increase the capacity of HBCUs to provide the highest-quality education to a greater number of students, and

to take advantage of these institutions' capabilities in serving the Nation's needs through five core tasks:

- (i) strengthening the capacity of HBCUs to participate in Federal programs;
- (ii) fostering enduring private-sector initiatives and public-private partnerships while promoting specific areas and centers of academic research and programmatic excellence throughout all HBCUs;
- (iii) improving the availability, dissemination, and quality of information concerning HBCUs to inform public policy and practice;
- (iv) sharing administrative and programmatic practices within the HBCU community for the benefit of all; and
- (v) exploring new ways of improving the relationship between the Federal Government and HBCUs.

(c) *Administration.* There shall be an Executive Director of the Initiative. The Department shall provide the staff, resources, and assistance for the Initiative, and shall assist the Initiative in fulfilling its mission and responsibilities under this order.

(d) *Federal Agency Plans.* (1) Each executive department and agency designated by the Secretary of Education (Secretary) shall prepare an annual plan (agency plan) of its efforts to strengthen the capacity of HBCUs through increased participation in appropriate Federal programs and initiatives. Where appropriate, each agency plan shall address, among other things, the agency's proposed efforts to:

- (i) establish how the department or agency intends to increase the capacity of HBCUs to compete effectively for grants, contracts, or cooperative agreements and to encourage HBCUs to participate in Federal programs;
- (ii) identify Federal programs and initiatives in which HBCUs may be either underserved or underused as national resources, and improve HBCUs' participation therein; and
- (iii) encourage public-sector, private-sector, and community involvement in improving the overall capacity of HBCUs.

(2) Each department and agency, in its agency plan, shall provide appropriate measurable objectives and, after the first year, shall annually assess that department's or agency's performance on the goals set in the previous year's agency plan.

(3) The Secretary shall establish a date by which agency plans shall be submitted to the Secretary. The Secretary and the Executive Director shall review the agency plans in consultation with the President's Board of Advisors on HBCUs, established in section 3 of this order, and shall submit to the President an annual plan to strengthen the overall capacity of HBCUs.

(4) To help fulfill the objectives of these plans, the head of each department and agency identified by the Secretary shall provide, as appropriate, technical assistance and information to the Executive Director for purposes of communicating with HBCUs concerning program activities of the department or agency and the preparation of applications or proposals for grants, contracts, or cooperative agreements.

(5) To help fulfill the goals of this order, each executive department and agency identified by the Secretary shall appoint a senior official to report directly to the department or agency head with respect to that department's or agency's activities under this order, and to serve as liaison to the President's Board of Advisors on HBCUs and to the Initiative.

(e) *Interagency Working Group.* There is established the Interagency Working Group, which shall be convened by the Executive Director and that shall consist of representatives from agencies designated by the Secretary, to help advance and coordinate the work of Federal agencies pursuant to this order, where appropriate.

**Sec. 3. President's Board of Advisors on HBCUs.**

(a) *Establishment.* There is established in the Department the President's Board of Advisors on Historically Black Colleges and Universities (the Board). The Board shall consist of not more than 25 members appointed by the President. The President shall designate one member of the Board to serve as Chair, who shall coordinate with the Executive Director to convene meetings and help direct the work of the Board. The Board shall include representatives of a variety of sectors, including philanthropy, education, business, finance, entrepreneurship, innovation, and private foundations, as well as sitting HBCU presidents.

(b) *Mission and Functions.* Through the Initiative, the Board shall advise the President and the Secretary on all matters pertaining to strengthening the educational capacity of HBCUs. In particular, the Board shall advise the President and the Secretary in the following areas:

- (i) improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs;
- (ii) engaging the philanthropic, business, government, military, homeland security, and education communities in a national dialogue regarding new HBCU programs and initiatives;
- (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the Nation in reaching its goal of having the highest proportion of college graduates by 2020;

(iv) elevating the public awareness of HBCUs; and

(v) encouraging public-private investments in HBCUs.

(c) *Administration.* The Executive Director of the Initiative shall also serve as the Executive Director of the Board. The Department shall provide funding and administrative support for the Board to the extent permitted by law and within existing appropriations. Members of the Board shall serve without compensation, but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law. Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Board, any functions of the President under that Act, except for those of reporting to the Congress, shall be performed by the Secretary, in accordance with guidelines issued by the Administrator of General Services.

(d) *Report.* As part of the annual report of the Initiative, the Board shall report to the President and the Secretary on their progress in carrying out its duties under this section.

**Sec. 4. General Provisions.**

(a) For the purposes of this order, "historically black colleges and universities" shall mean those institutions listed in 34 C.F.R. 602.8.

(b) This order shall apply to executive departments and agencies designated by the Secretary. Those departments and agencies shall provide timely reports and such information as is required to effectively carry out the objectives of this order.

(c) The heads of executive departments and agencies shall assist and provide information through the White House Initiative to the Board, consistent with applicable law, as may be necessary to carry out the functions of the Board. Each executive department and agency shall bear its own expenses of participating in the Initiative.

(d) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department, agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations. ■

*Law Wise* is published by the Kansas Bar Association during the school year. The Kansas Bar Foundation, with Interest on Lawyers' Trust Accounts funding, provides support for this publication. *Law Wise* provides general information about law-related matters of interest to teachers, students, and the public in Kansas, but does not provide any legal advice, so readers should consult their own lawyers for legal advice. It is published free, on request, for teachers or anyone interested in law-related education and is edited by Kathryn Gardner, Topeka. For further information about any projects or articles, contact Kathryn Gardner, Topeka, (785) 338-5366; or Beth Warrington, communication services director, (785) 234-5696. *Law Wise* is published by the Kansas Bar Association, 1200 SW Harrison, Topeka, KS 66612-1806.

# LESSON PLAN

## FOR THE PRESIDENT, ALL IN A DAY'S WORK

Source: <http://bit.ly/ZetytQ>

### DESCRIPTION

Students learn the primary responsibilities of the President and how those duties connect to the powers the Constitution grants to the Executive Branch. Students also learn about the types of issues the Executive Branch deals with and which federal agencies handle them.

### OBJECTIVES

The student will ...

- Analyze the difficult decisions the president must make by ranking a list of presidential responsibilities from most difficult to easiest.
- Identify the powers of the Executive Branch by reading a selection from the U.S. Constitution.
- Match presidential responsibilities with the specific Executive Branch powers listed in the Constitution.
- Identify the federal agencies that handle a list of specific issues by matching the agencies with the issues.

### LESSON PREP

Print all student and teacher materials “All in a Day’s Work PDF” (<http://bit.ly/114sf0s>)

### STEP BY STEP

**ANTICIPATE** by asking students to think of one thing they think the president does in his job as president. Give students a moment to think, then randomly call on students to share what they thought of.

**DISTRIBUTE** one “All in a Day’s Work” packet to each student.

**READ** the directions on the first page, “All in a Day’s Work,” with the class.

**ASK** students to complete Groups A, B, and C on the “All in a Day’s Work” page. When they have finished, discuss each group of three tasks with the class. (Tasks are grouped in threes to make the ranking and discussion more manageable.)

**READ** “Play by the Rules” with the class. Explain that this is the actual text of the Constitution. The President’s powers are underlined so they will be easier to spot. Discuss them as you read.

**READ** the directions for “I’ve Got the Power” with the class. This matching exercise will help them link the tasks they ranked on the first page with the powers they read about in the Constitution excerpt on the second page.

**ASK** students to complete the “I’ve Got the Power” matching activity.

**REVIEW** the answers to the matching activity.

**READ** the introduction to “So Many Laws, So Little Time!” with the class.

**ASK** students to complete “So Many Laws, So Little Time!” word bank activity.

**REVIEW** the answers to the word bank activity.

**COLLECT** the packets.

**CLOSE** by asking students to silently recall one power the President has. Call on students until all 10 powers discussed in the lesson have been named.



## TERRIFIC TECHNOLOGY FOR TEACHERS

This site is the gateway to information about the Executive Branch in Kansas.

<http://bit.ly/YvbSLU>

This kansapedia site by the Kanas Historical Society distinguishes the Kansas executive branch from the United States executive branch.

<http://bit.ly/14hsudC>

This site lists and describes the statewide offices, the many departments within the executive branch, and the Kansas boards and commissions under the authority of the Kansas executive branch.

<http://bit.ly/ZRe0YV>

This site explains what executive orders are, lets you search the text of executive orders by keyword, and has information about all executive orders beginning with those signed by President Franklin D. Roosevelt (Jan. 8, 1937 – Dec. 27, 2012).

<http://1.usa.gov/10QBBeK>

This site lists the topics and dates of all executive orders issued by President Obama and provides links to the full text of those executive orders.

<http://1.usa.gov/10UP7Q9>