

FILE

Subject

*Keep Salaries County  
Officers Sheriff*

Copy to



STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

January 4, 1974

Opinion No. 74- 4

Honorable Bob W. Storey  
State Senator  
Suite 310, Columbian Title Building  
Topeka, Kansas 66612

Re: K.S.A. 1972 Supp. 28-820 as amended.

Dear Senator Storey:

This office has received a number of inquiries concerning the effect of the various amendments to the sheriff's fees and salary measure. We hope this response answers the questions.

As set out in the 1973 Session Laws, K.S.A. 1972 Supp. 28-820 as amended provides the annual salary for the sheriff based upon the population of the county. The last bracket set by the legislative action is for counties with a population of more than 45,000 and not more than 60,000. The act provides that in counties of more than 60,000 and not more than 100,000 population, the board of county commissioners, by resolution, shall fix the annual salary of the sheriff.

The act continues by setting forth certain circumstances for which additional compensation shall be granted by resolution of the board of county commissioners. The first set of circumstances applies to any county "in which there is located all or in part, an active military establishment, federal reservoir or state institution of higher education." Since the conjunction "or" is used, the applicability of the provision would go to any county that has any one or more of the named facilities including possibly all three. Should the conditions be present, the board is directed to fix additional compensation, by resolution, in an amount not less than 25% nor more than 50% of the prescribed annual salary. The determinative factor is that the existence of the facilities must result in additional duties for the sheriff.

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Presumably the more demonstrable the duties are, the higher the percentage that would be granted.

A "state institution of higher education" refers to the schools under the authority of the State Board of Regents. That is to say, the University of Kansas, Kansas State University, Wichita State University, Fort Hays State College, Emporia State Teachers College and Pittsburg State College. The provision is applicable only to counties which have such institutions located "all or in part" within the county.

There are exceptions in the act. In any county with an assessed tangible valuation of not more than \$45,000,000, the additional compensation is on a 20% of 50% figure. The presence of the facilities and the showing of added duties are required. A more particular exception deals with counties having a population of more than 45,000 and less than 55,000 with a first class city with a population of more than 36,000. In such a case the additional compensation allowed shall not exceed 25% of the annual salary. The wording suggests that the board could fix any amount up to but not over the 25% figure.

The act continues with provision for counties which adjoin or are adjacent to any county where there is, all or in part, an active military establishment or federal reservoir. Under the tenet of statutory construction that words are to be given a common usage meaning, "adjacent" would be any county next to and "adjoin" would be any county which touches the border of any county. As before it must be shown that the sheriff has added duties because of the presence of the facilities in a neighboring county. If it is so shown, the board shall grant additional compensation not to exceed 15% of the annual salary. It should be noted that the legislature amended this provision from a permissive "may" to the mandatory "shall."

According to information received from the Water Resources Board, the federal reservoirs are:

Fall River	Kanopolis
Toronto	Tuttle Creek
Pomona	Wilson
Council Grove	John Redmond
Milford	Elk City
Perry	Marion
Melvern	Cedar Bluffs
Kirwin	Webster
Lovewell	Norton
Cheney	Clinton (under construction)
Glen Elder	El Dorado (under construction)

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Further provision is made for a county which contains, or counties which adjoin or are adjacent to such county, a state security hospital. The board is directed to allow additional compensation not to exceed 10% of the annual salary. K.S.A. 76-2460 establishes the state security hospital within Larned State Hospital.

Lastly the statute provides that the board shall provide for the feeding of prisoners. The minimum expense per prisoner per day for feeding is to be one dollar and fifty cents. The sheriff shall receive one dollar per day when attending jail when occupied by a prisoner or prisoners.

If we may be of further assistance, please feel free to call upon us.

Very truly yours,



VERN MILLER  
Attorney General

VM:DMH:jsm