

FILE

Subject

*Fee Salaries
County Officers
General Regulations*



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

March 26, 1974

Opinion No. 74- 99

Elmer F. Anderson, Chairman
Board of Dickinson County Commissioners
Dickinson County Courthouse
Abilene, Kansas 67410

Dear Mr. Anderson:

We have your letter of February 26, 1974. You inquire concerning a portion of K.S.A. 28-820, which states thus:

"In any county in which there is located all or in part, an active military establishment, federal reservoir or state institution of higher education which results in added duties for the sheriff, the board of county commissioners shall by resolution fix and allow additional compensation in an amount equal to not less than twenty-five percent (25%) nor more than fifty percent (50%) of the annual salary hereinbefore prescribed"

Despite the relative clarity and simplicity of this language, we have received a remarkable number of questions regarding its interpretation and application. In its application to Dickinson County, the board of county commissioners is required to fix and allow by resolution additional compensation to the sheriff in an amount equal to not less than twenty-five percent nor greater than fifty percent of the annual salary prescribed by statute if 1) any part of Milford Lake or Reservoir lies in Dickinson County, and 2) the presence of all or any part of the reservoir or lake in Dickinson County "results in added duties for the sheriff." Stated otherwise, the board of county commissioners has no authority to authorize additional compensation merely because some part of a federal reservoir lies within its jurisdiction. Additional compensation is authorized, and indeed must be allowed, if the board determines that the presence of all or any part of a federal reservoir in the jurisdiction results in added duties for the sheriff.

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The presence of a federal reservoir, or part thereof, within a jurisdiction would be no ground for additional compensation, obviously, unless the sheriff had "added duties" as a result thereof, and the Legislature clearly so provided.

You state that a "very few miles of territory in the Northeast corner of Dickinson County, Kansas, touches [sic] Milford Lake" Given the technicality of the questions you raise, it may be that only the County Engineer can resolve the question whether some part of the reservoir actually lies within the county. If some part of the reservoir does lie within the county, and its presence results in added duties for the sheriff, then and only then is the board of county commissioners permitted to authorize the additional compensation set forth in the quoted portion of the statute above.

To recapitulate, the board has no discretion to authorize the additional compensation discussed herein unless it finds, first, that there is located in the county "all or in part, an active military establishment, federal reservoir or state institution of higher education," and secondly, that the presence of one or another of these results in added duties for the sheriff.

You inquire, secondly, as follows:

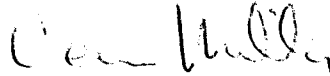
"[W]hat degree of added duties need be shown by facts in order to justify additional compensation, nominal, casual or extensive. To pose the question more clearly, if the Dickinson County Sheriff 'works' one accident involving a car trailering a boat in a ditch, headed toward or coming from Milford Lake, in a year, is this sufficient 'added duties' to his office to justify the salary increase (nominal); or one such accident a month (in our opinion casual); or more frequent accidents such as one per week which could clearly be considered extensive. What is meant by 'added duties?'"

The Legislature has not chosen to clarify the term further, or to elaborate standards to guide the exercise of discretion by boards of county commissioners. The term is largely self-explanatory. When Latin phrases were more commonly used in legal jargon, it was not uncommon to find references to the maxim de minimis non curat lex, which is defined or paraphrased in Black's Law Dictionary (4th Ed., 1957), thus: "The law does not care for, or take notice of, very small or trifling matters." One additional accident per year, such as you describe, would be so trifling as to be de minimis. No uniformly applicable precise legal calibration of what is to be denominated de minimis has

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ever been formulated. That determination involves, essentially, a matter of judgment, which by law is left with the boards of county commissioners of the respective counties. When the added duties of the sheriff become what you describe as "casual," they should not thereafter be judged "de minimis," and he is entitled to additional compensation. Historically speaking, the term "de minimis" has been applied only to very small, indeed miniscule, quantities, amounts, numbers or whatever. It does not lend itself readily, or at all, to precise quantification. One additional automobile accident per year would clearly be de minimis. One additional accident per month may very well not be. In between, there is much room for argument and judgment. The exercise of that judgment, and the resolution of those arguments, has been lodged by law with the boards of county commissioners.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm