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Subject

Jess & Salaries - County Officers - Probate

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STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

June 14, 1974

Opinion No. 74-182

William A. Taylor, III
Cowley County Counselor
P.O. Box 731
Winfield, Kansas 67156

Dear Mr. Taylor:

You inquire concerning §§ 53 and 54 of 1974 House Bill 2054, which amends K.S.A. 1973 Supp. 59-215 and -216, respectively. Section 53 carries forward in the amended K.S.A. 59-215 the language heretofore found there, as follows:

"In any county in which there has been two (2) city courts established and having no county court, the probate judge shall receive as compensation for his services an annual salary of eleven thousand one hundred thirty dollars (\$11,130)." [Underscored language amended.]

Section 54 introduces into K.S.A. 59-216 new language, which states in pertinent part thus:

"In any county having a population of more than thirty-three thousand (33,000) and not more than sixty-five thousand (65,000), the probate judge shall receive as compensation for his services an annual salary in the amount of twenty-two thousand dollars (\$22,000)."

Under subsection (b) of this section, any probate judge whose salary is fixed by this section "shall not practice law in any court of the county in which he resides."

Cowley County is a county in which there exists two city courts and no county court. In the past, the salary of the probate judge has been paid as prescribed by K.S.A. 59-215. However, the population of Cowley County slightly exceeds 34,000, and thus brings the county within the population category fixed by the new language in K.S.A. 59-216.

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One applicable rule of construction is that generally speaking, when the Legislature has revised and amended an existing statute, it is presumed to have intended to make some change therein. Katz v. Katz, 191 Kan. 500, 382 P.2d 331 (1963). Prior to its amendment this year, K.S.A. 59-215 prescribed the salaries for probate judges in all counties with populations of not more than 100,000. The population categories included within its coverage were reduced by the amendment, to extend only to counties with populations of not more than 24,000, in the enumerated list of county population categories. K.S.A. 59-216, prior to its amendment, prescribed the salaries for judges in certain counties of between 35,000 and 45,000 population. Its application was substantially changed, to include all counties with a population commencing, in effect, at the population limit at which K.S.A. 59-215 stopped, i.e., 24,000, and extending to all counties having a population of not more than 100,000, those formerly within the scope of K.S.A. 59-215. Thus, by the amendment of K.S.A. 59-216, it is clear that the Legislature intended to bring within its scope certain counties which were formerly within the scope of K.S.A. 59-215. Cowley County, in our view, is one of them.

There remains, of course, the question of what effect is to be given the scope of the phrase "any county" which appears several times in the text of K.S.A. 59-215 and was unchanged by the amendment, which refers to counties having special circumstances, i.e., those in which is located an active military establishment, those located adjacent to a county in which there is located such an establishment, and "any county" in which there has been two city courts and no county court. To the extent that the phrase "any county" poses an ambiguity in choosing between the applicability of section 54 of the bill and section 53, we think deference must be given to the rule cited above, that the Legislature is deemed to have intended a change in the existing law by an amendment thereto, and where such a change is clear as here, i.e., payment of a salary of \$22,000 to the probate judge of any county with a population of more than 33,000 and not more than 65,000, the act should be construed to give effect to that change unless a compelling reason mitigates against such a construction. There is no such reason here. Accordingly, we conclude that the salary of the probate judge of Cowley County is fixed by section 54 of 1974 House Bill 2054.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Arden Ensley, Revisor of Statutes Office