

FILE

Subject

*Fees & Salaries
County Officers Probate
Judge
Legislature 1974*



Copy to

STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

June 10, 1974

Opinion No. 74- 190

Honorable Donald L. White
Franklin County Probate Judge
Franklin County Courthouse
Ottawa, Kansas 66067

Dear Judge White:

You inquire concerning section 53 of 1974 House Bill 2054, which prescribes the salaries of probate judges in certain counties, to be paid effective January 13, 1975. In pertinent part, it provides thus:

"In counties having a population of:	Per annum
Not more than 10,000	9,000
More than 10,000 and not more than 24,000	13,000
More than 15,000 and not more than 20,000	6,600
More than 20,000 and not more than 24,000	6,950"

As you state, it "appears that the Legislature failed to strike the last two lines of the pay bill."

The applicable principle of statutory construction is stated in City of Manhattan v. Eriksen, 204 Kan. 150, 460 P.2d 622 (1969):

"The historical background, legislative proceedings, and changes made in a proposed law during the course of its enactment may properly be considered by this court in determining legislative intent."
204 Kan. at 154.

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As this section reached the floor of the Senate, it provided a separate salary for counties within each of the population brackets listed in the categories enumerated above, including separate salaries for counties with a population of more than 10,000 and not more than 15,000, counties with a population of more than 15,000 and not more than 20,000, and counties with a population of more than 20,000 and not more than 24,000. On the Senate floor, an amendment was offered and accepted prescribing a salary of \$13,000 for probate judges in all counties with a population of more than 10,000 and not more than 24,000. When this amendment was accepted, no correlative action was taken to delete the separately prescribed salaries for counties within the two population groups which were within this single broader category. As a result, the salary of \$13,000 was prescribed by virtue of the adopted amendments for probate judges in counties with a population of more than 10,000 and not more than 24,000, and salaries remained separately prescribed at the rates of \$6,600 and \$6,950 per year for counties with a population of more than 15,000 and not more than 20,000 and counties with a population of more than 20,000 and not more than 24,000, respectively.

The purpose of any statutory interpretation is to ascertain the intent of the legislature where possible. Here, the section in question is on its face absolutely ambiguous, as to which of two separately prescribed salaries should control. This ambiguity can be resolved only by resort to the changes made in the section during the course of its enactment. In order to give effect to the amendment which was adopted by the Senate, and enacted by the Legislature, it is necessary to give no effect to the language in the bill which was superseded by the amendment, but which, through apparent inadvertence, was permitted to remain. A helpful principle, although one properly to be invoked only rarely, was cited in Clark v. Murray, 141 Kan. 533, 41 P.2d 1042 (1935):

"When the interpretation of a statute according to the exact and liberal import of its words would lead to absurd or mischievous consequences, or would thwart or contravene the manifest purpose of the legislature in its enactment, it should be construed according to its spirit and reason, disregarding or modifying, so far as may be necessary, the strict letter of the law."

In order to give effect to the amendment which was adopted and enacted, it is necessary to disregard the provisions in the bill which were manifestly intended to be superseded by the amendment.

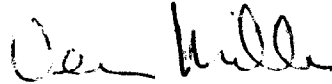
Accordingly, we conclude that the sum of \$13,000 constitutes the per annum salary of probate judges in counties with a popula-

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tion of more than 10,000 and not more than 24,000, and that the sums of \$6,600 and \$6,950 provided for counties within that single category must be disregarded in the computation of salaries due on and after January, 1975.

As to the filing fee due upon filing for election or reelection prior to June 20, 1974, this office has consistently held that the fee must be computed on the basis of the salary provided by law in force and provided by law to be paid at the time of the filing, and not on the basis of the salary prescribed by the legislature to become effective at future date.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Arden Ensley
Office of Revisor of Statutes
State Capitol
Topeka, Kansas 66612