

Subject

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Fees & Salaries  
County Officers - General



STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

August 21, 1974

Opinion No. 74-285

John E. Sanders  
Greenwood County Attorney  
Greenwood County Courthouse  
Eureka, Kansas 67045

Dear Mr. Sanders:

K.S.A. 28-831 states thus:

"If any salary of any officer or employee whose salary or compensation was fixed before the effective date of this act by the provisions of article 8 of chapter 28 of the Kansas Statutes Annotated, or acts amendatory thereof or supplemental thereto, has been reduced during the calendar year 1972 as a result of a change in population of the county, the board of county commissioners of such county shall reimburse such officer or employee for such loss of salary until otherwise provided by law."

In 1967, the Legislature enacted into law 1967 Senate Bill 319, see ch. 78, L. 1967, which required that commencing in the year 1970, in the annual enumeration taken under the authority of K.S.A. 11-101, all inhabitants were to be "enumerated as they now are by the federal census." The Legislature immediately regretted this measure, and in 1971, enacted K.S.A. 11-101b and -101c, abandoning the federal method of enumeration. However, the changed method of enumeration did result, while in force, in a reported decline of population in several counties, resulting, in turn, in lesser salaries which were based on population. Because these population declines resulted, generally speaking, not from an actual population loss, but from the changed method of enumeration, many county officers faced reduced compensation, with no corresponding reduction in the numbers of people they served. In order to remedy this, K.S.A. 28-831 was enacted, effective July 1, 1972.

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As indicated above, the purpose of K.S.A. 28-831 was to authorize reimbursement for a loss of salary occurring during the calendar year 1972, and to authorize continued payment of the former amounts unless and until otherwise provided by law. Thus, having invoked K.S.A. 28-831 in 1972, the county properly reimbursed any loss resulting from a salary reduction occurring in the calendar year 1972. The question is, however, whether K.S.A. 28-831 authorizes not only continued reimbursement of those losses, but authorizes, in addition, payment in subsequent years of increases in compensation provided by the Legislature for counties of over 10,000 population, Greenwood's pre-1972 population.

In our opinion, it does not. It authorizes reimbursement of a "loss of salary" of any officer whose salary was fixed before its effective date, July 1, 1972, by

"the provisions of article 8 of chapter 28 of the Kansas Statutes Annotated, or acts amendatory thereof or supplemental thereto"

and whose salary was "reduced during the calendar year 1972" as a result of a population change. Whatever acts are referred to in the phrase "acts amendatory thereof or supplemental thereto," they are necessarily acts which were in force and effect which fixed the salary of county officers prior to July 1, 1972, and hence, the phrase could not include acts of subsequent years fixing the salaries and compensation of such officers. K.S.A. 28-831 authorizes reimbursement, albeit on a continuing basis, for a loss which occurred in one year alone, i.e., in the calendar year 1972, and does not authorize reimbursement for losses which occurred in subsequent years due to a population change. So long as it is in force and effect, K.S.A. 28-831 authorizes continuing reimbursement for any loss of salary by an officer whose salary was reduced during calendar year 1972. It does not authorize reimbursement for losses in salary resulting from increases in such salaries which are authorized in subsequent years, and which county officers do not enjoy because the population of the county remains below the 10,000 level as a result of the reported population decline in 1971 or 1972.

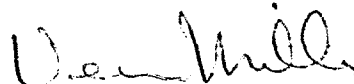
In our opinion, thus, K.S.A. 28-831 authorizes, so long as it remains in effect, continuing reimbursement for any loss of salary suffered by a county officer which resulted from a salary reduction occurring during calendar year 1972 as a result of a population loss, and which loss would otherwise continue. It does not, however, authorize payment in subsequent years of increases provided by the Legislature for officers of counties having the former population of Greenwood, prior to the reduction in 1972. In short, it authorizes continued reimbursement of an amount equal to any loss of salary which was suffered during calendar

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year 1972, and which loss would otherwise continue, and does not authorize reimbursement of the amount of any salary increase authorized by the Legislature for subsequent years for which county officers did not qualify because of the earlier population loss.

If, as appears, moneys have been paid pursuant to K.S.A. 28-831 in excess of losses properly reimbursable under that provision, it will be necessary to make appropriate provision for adjustment of these overpayments. If further questions arise in this matter, please feel free to call upon us.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm