

FILE

Subject

*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

November 15, 1974

Opinion No. 74- 366

Mr. Douglas S. Brunson
Kiowa County Attorney
Courthouse
Greensburg, Kansas 67054

Dear Mr. Brunson:

This will acknowledge receipt of your opinion request of November 7, 1974.

You pose two questions, inquiring:

1. Who specifically is required to hire a newly elected sheriff under K.S.A. 19-801b. (c)?
2. Upon what basis is the salary as mentioned in K.S.A. 19-801b. (c) dependent?

We first note that K.S.A. 1973 Supp. 19-801b. was amended by chapter 114 of the 1974 Session Laws of Kansas. We further note, however, that no changes were made in subsection (c). This subsection provides:

"Each newly elected sheriff of each county shall be hired as a deputy sheriff and shall be paid a salary as deputy sheriff while attending the law enforcement training center and the tuition, board, room and travel expense for the sheriff-elect at the law enforcement training center shall be paid by the county."

Mr. Douglas S. Brunson
November 15, 1974
Page 2

It would appear that in some respects the question of who shall "hire" the newly elected sheriff as a deputy is moot since the statute clearly provides that he "shall be hired as a deputy sheriff."

It is our opinion, however, that the sheriff is the party with the authority to "hire" deputies, and the sheriff-elect should be hired in the same manner as any other deputy.

We would refer you to the provisions of Article 8 of Chapter 19 which, among other things, specifies the powers and duties of the sheriffs of the several counties. We note that K.S.A. 19-805 provides that "each sheriff may appoint such and so many deputies as he may think proper" K.S.A. 19-810 provides that such appointment shall be in writing, under the hand of the sheriff, and shall be filed with the county clerk. It is our opinion that this procedure should be followed with respect to hiring the sheriff-elect as a deputy.

With respect to your second question, it is our opinion that the sheriff-elect should be compensated while attending the law enforcement training center in the same manner and under the same consideration as any other deputy.

We would refer you to the provisions of K.S.A. 28-167 which provides for the compensation of deputies and other assistants in counties having a population of 100,000 or less. This section provides that "the board of county commissioners shall allow such reasonable sums for assistants, deputies . . . as may be necessary to properly expedite the business of the . . . sheriff" K.S.A. 28-168 goes on to provide that such compensation should be paid out of the county general fund in equal monthly installments.

It is our opinion, therefore, that the salary of the sheriff-elect should be set by the board of county commissioners in an amount which is just and reasonable under all the circumstances existing. If the sheriff-elect is required by statute to attend the law enforcement training center, he is thereby precluded from maintaining other gainful employment during such period of time. It would appear that this is one of the primary considerations the county commissioners should keep in mind in determining a reasonable allowance for the sheriff-elect.

Very truly yours,



VERN MILLER
Attorney General

FILER

Subject

Elections - Ballots
Marking - Name

Copy to



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

November 21, 1974

Opinion No. 74-367

Mr. Tracy D. Klinginsmith
Jackson County Attorney
Jackson County Courthouse
Holton, Kansas 66436

Dear Mr. Klinginsmith:

You inquire concerning the legal effect of certain marks on certain ballots cast in the recent general election.

First, you inquire whether the names written in by the voter of "John Doe" for the office of county clerk, "John Doe" for that of county treasurer, "Joe Blow" for the office of county attorney, and "John Doe, Democrat" for the office of township trustee constitute identifying marks so as to void the ballot in its entirety, or whether these write-in designations merely invalidate the ballot as to these particular offices. The voter properly marked an "X" in the voting square opposite each of these names written in.

K.S.A. 25-3002(b) (2) states in part thus:

"Any ballot upon which an identifying mark has been made shall be wholly void and no vote thereon shall be counted. Determination of whether a mark is an identifying mark shall rest in the discretion of the board canvassing in the case of a canvass...."

In *Parker v. Hughes*, 64 Kan. 216 (1902), the court discussed the use of so-called distinguishing marks. An "identifying mark" is a mark

"by which it may be inferred that the voter sought to distinguish his ballot for the purpose of being able to assure a purchaser of votes that he had 'delivered the goods.'" 64 Kan. at 222.