



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

February 7, 1975

Opinion No. 75-47

The Honorable Pete Farabi
Judge of the City Court
of Pittsburg
301 Professional Building
Pittsburg, Kansas 66762

Dear Judge Farabi:

You request review of opinion no. 74-213, issued June 27, 1974, by Attorney General Vern Miller. The request for that opinion was prompted, in turn by an earlier 1974 opinion, no. 74-175, which concluded, first, that candidates for the offices of judge and marshal of the City Court of Pittsburg, elected pursuant to K.S.A. 20-1425, may not constitutionally be restricted to residents of the City of Pittsburg, but may include any otherwise qualified person who is a resident of Crawford County, and secondly, that any qualified elector of the county must be eligible to vote for candidates for that office.

That opinion prompted the predictable next question, whether the expense of the operation of the City Court should be borne by the county as a whole, rather than by the City of Pittsburg only. Attorney General Miller stated thus:

"The city is given the power to fix the salaries of the judge and marshal, and thus, enjoys some measure of control of the costs of the court. In addition, the city receives the costs and fees assessed and collected by the court. . . . It has long been settled that the Equal Protection Clause does not require a precise correlation between the incidence of a tax and its benefits. Thus, we do not find any compelling constitutional objection to the present statutory requirement that the city bear the costs of the court."

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In your recent letter, you describe the distribution and disposition of fees, costs and fines collected by the clerk of the City Court of Pittsburg, as follows:

- "1) City receives \$6.10 of all fees and costs per case;
- 2) County Attorney Fund receives \$3.00 per case;
- 3) .15¢ is withheld to pay for the annual Judicial Report per case;
- 4) .50¢ is withheld for the Crawford County Law Library per case;
- 5) The Marshall of the City Court of Pittsburg receives his costs from the fees and Court costs per case;
- 6) The Crawford County School Fund receives all fines collected by the Court, which last quarter totaled \$11,244.29."

Thus, you point out that the city does not receive the bulk of the benefits derived from the Court. Both Crawford County and the City of Pittsburg derive benefits from the court, although the City alone is "saddled with the expense of the Court," you state. You thus renew the question whether the requirement that the City bear the entire cost of the court, which has countywide jurisdiction, conforms with requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. As stated earlier, the city controls, in substantial measure, the fixed costs of the court, for it sets the salary of the Judge and Marshal thereof.

If the county were held to be constitutionally required to contribute to the support of the Court, it could equally be argued in behalf of the county that it is entitled to a voice in fixing the salaries of the Judge and Marshal. This amendment has never been construed to require a precise uniformity between the burden of a tax and the distribution of benefits derived therefrom. A taxpayer of the City of Pittsburg might complain, for example, that he is unjustly discriminated against by being required to pay, through municipal taxation, certain costs of the court the burden

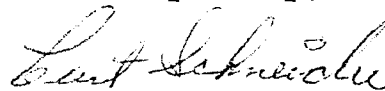
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of which is not distributed uniformly throughout the county through which the jurisdiction of the court extends. However, in Morton Salt Co. v. City of South Hutchinson, 177 F.2d 889 at 892 (10th Cir. 1949), the court stated thus:

"When, however, the tax is levied upon all the property for public use, such as schools, the support of the poor, for police and fire protection, for health and sanitation, for waterworks and the like, the tax need not, and in fact seldom does, bear a just relationship to the benefits received. Thus the property of a corporation may be taxed for the support of public schools, asylums, hospitals, and innumerable public purposes, although it is impossible for it to derive any benefits other than privileges which come from living in an organized community. The benefits are intangible and incapable of pecuniary ascertainment. . . ."

A tax to support the judicial system is particularly one from which the benefits are substantially intangible. It would be impossible to assess with any arithmetic precision a correlation of benefits among the residents of the city and of the county. In our judgment, whatever inequality there may exist in the incidence of the burden of taxation to support the court, between the taxpayers of the city and of the county, is, within the statutory framework which has been discussed in this and the preceding opinions concerning this court, constitutionally justifiable, there exists no disparity between the burden of taxation and the benefit derived therefrom which would support a claim of invidious discrimination.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj