



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

May 14, 1975

Opinion No. 75- 224

Mr. Phil Harris
City Attorney
8500 Santa Fe Drive
Overland Park, Kansas 66212

RE: K.S.A. 1974 Supp. 12-6a01(d)

Dear Mr. Harris:

You have requested an opinion from this office relative to an interpretation of K.S.A. 1974 Supp. 12-6a01(d). You advise that the city of Overland Park now employs its own legal staff to handle the necessary legal work when preparing and issuing temporary notes or bonds for improvement projects authorized by the above statute. Whereas, heretofore the city has employed the services of independent attorneys to handle the legal work incident to such projects. Your specific question is whether under K.S.A. 1974 Supp. 12-6a01(d) the five percent (5%) limitation on reimbursement to the city for administrative and supervisory services performed by the city extends to expenses for legal services provided by the city's legal staff.

K.S.A. 1974 Supp. 12-6a01(d) provides in pertinent part as follows:

"'Cost' means all costs necessarily incurred for the preparation of preliminary reports, the preparation of plans and specifications, the preparation and publication of notices of hearings, resolutions, ordinances and other proceedings, necessary fees and expenses of consultants and interest accrued on borrowed money during the period of construction together with the cost of land, materials, labor and other lawful expenses incurred in planning and doing any improvement and may include

Mr. Phil Harris
Page Two
May 14, 1975

a charge of not to exceed five percent (5%) of the total cost of an improvement or the cost of work done by the city to reimburse the city for the services rendered by the city in the administration and supervision of such improvement by its general officers. . . ." [Emphasis supplied.]

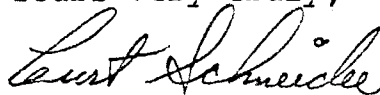
Your question necessarily pivots on an analysis of the statutory duties of the city attorney of a city of the first class. We believe the city attorney may be properly considered a general officer of the city, and the functions performed by that office relative to a particular bond issue depends essentially on the amount of legal assistance that the city governing body decides to seek from its "in-house counsel," inasmuch as they are empowered with the option to secure the services of an independent consulting attorney for advice and assistance with the planning and construction of an improvement. In those instances where a city attorney performs substantially all of the required legal work pertinent to a bond issue, the answer to your question becomes self-evident in view of the definition of "administration" as employed in K.S.A. 1974 Supp. 12-6a01(d). We find no specific definition for this term in the statute, and resort to Webster's New Third International Dictionary (1966) which defines "administration" as follows:

"4a: The total activity of a state in the exercise of its political powers including the action of the legislative, judicial, and executive departments."

It thus logically follows that the exercise of statutory duties by an officer of the city would fall clearly within the purview of this definition.

Accordingly, it is the opinion of this office that services rendered by a city attorney in assisting a city governing body in the planning and making of an improvement pursuant to K.S.A. 1974 Supp. 12-6a01, et seq., are in essence an administrative function, and thus any charge for such service cannot, when coupled with other city charges for project administration and supervision, exceed the five percent (5%) limitation as proscribed in K.S.A. 1974 Supp. 12-6a01(d).

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj