



STATE OF KANSAS

**Office of the Attorney General**

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**Curt T. Schneider**  
Attorney General

October 21, 1975

ATTORNEY GENERAL OPINION NO. 75-404

Mr. Vernon D. Grassie  
Assistant County Attorney  
Judicial Center  
Fourth and Pine  
Pittsburg, Kansas 66762

Re: Probate Courts--Judges--Compensation

Synopsis: The probate judge of Crawford County is not entitled to retain judicial council fees payable pursuant to K.S.A. 28-113a, and is not entitled to additional compensation provided by K.S.A. 1974 Supp. 59-211c.

\* \* \*

Dear Mr. Grassie:

You inquire whether the probate judge of Crawford County is entitled to retain judicial council fees. Crawford County is a county having a population of more than 33,000 and less than 65,000. K.S.A. 1974 Supp. 59-216(a) provides in pertinent part thus:

"In any county having a population of more than thirty-three thousand (33,000) and not more than sixty-five thousand (65,000), the probate judge shall receive as compensation for his service an annual salary in the amount of twenty-two thousand dollars (\$22,000). *Said probate judge shall not receive any compensation or fees for his services pursuant to K.S.A. 28-806 or K.S.A. 1973 Supp. 59-215 or 59-2922, or amendments thereto, or from*

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*any other source, except that he shall be entitled to retain fees received for performing marriage ceremonies." [Emphasis supplied.]*

Judicial council fees payable to probate judges are authorized by K.S.A. 28-133a, enacted in 1937. Upon response by a probate judge to requests of the judicial council for information concerning cases disposed of, the council shall certify the fact of such report to the board of county commissioners, which

"shall allow and pay to the probate judge a sum equal to a fee of ten cents for each case so reported, the sum so paid to be in addition to the salary of the probate judge as otherwise provided by law."

In addition, K.S.A. 1974 Supp. 59-211c, enacted in 1969, provides in pertinent part thus:

"The probate and juvenile judge of Crawford county may, in his discretion, hold court regularly in the cities of Girard and Pittsburg, and in the event said court does establish a regular time for sitting in each of said cities, then in addition to the other compensation provided by law he shall receive the sum of two thousand five hundred dollars (\$2,500) annually to be paid from the general fund of such county."

The question presented is whether the underscored language quoted above prohibits probate judges subject thereto to receive judicial council fees, and the additional compensation pursuant to K.S.A. 1974 Supp. 59-211c.

You point out that under K.S.A. 1974 Supp. 59-217, concerning counties with a population between 180,000 and 250,000, the salary of the probate judge is fixed for judges subject thereto, with the direction that said judge

"shall not retain any fees, costs, mileage, commissions or compensation for services

which he is authorized to perform because of his office, but shall turn over such fees, *but not including fees for the performance of marriage ceremonies and judicial council fees*, to the county treasurer." [Emphasis supplied.]

K.S.A. 1974 Supp. 59-218 likewise makes special provision for judicial council fees, in this instance prohibiting retention of such fees by the probate judge:

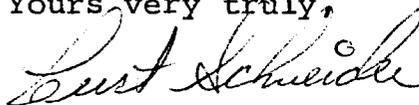
"The probate judge shall not retain any fees, costs, mileage, commissions or compensation for any services which he is authorized to perform because of his office, including judicial council fees, but shall turn over the receipts from all such items to the county treasurer except fees for the performance of marriage ceremonies."

K.S.A. 1974 Supp. 59-216 is explicit that the probate judge shall not receive any compensation or fees pursuant to the enumerated statutes, or "from any other source," except fees for marriage ceremonies. Presumably, if the Legislature had intended to permit retention of judicial council fees, it would have said so. In K.S.A. 1974 Supp. 59-217, when the Legislature wished to assure that the judge could retain judicial council fees, they were expressly excepted from the general prohibition against retention of fees, costs and the like. K.S.A. 1974 Supp. 59-218 prohibited the retention of any fees whatever, although there the Legislature expressly mentioned judicial council fees.

The fact that they were expressly enumerated in that statute affords little ground for implying an exception to the plain and unambiguous language of another, K.S.A. 1974 Supp. 59-216(a). It is an explicit statute, providing the amount of compensation which the probate judge shall receive, and assuring that he or she shall receive no greater compensation or additional compensation from any other source than marriage ceremony fees.

Accordingly, in my judgment, the probate judge of Crawford County is not entitled to retain judicial council fees paid pursuant to K.S.A. 28-113a, and is not entitled to the additional compensation provided by K.S.A. 1974 Supp. 59-211c.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General