



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 25, 1976

ATTORNEY GENERAL OPINION NO. 76- 104

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

Re: County Officers--County Attorneys--Duties

Synopsis: A condemnation action for property for a fire house for a county fire district organized under K.S.A. 19-3601 *et seq.* is one in which the county is legally interested, and the county attorney is not entitled to additional compensation for representation provided the fire district in such a case.

* * *

Dear Mr. Grassie:

You inquire whether a county attorney is entitled to additional compensation for representation provided in a condemnation suit on behalf of a fire district organized pursuant to K.S.A. 19-3601 *et seq.* You advise that in order to obtain ground for a fire house for Baker Township Fire District, which was organized under the cited statutes, you were requested by the fire board to file the necessary action. You billed the district for attorney's fees for the case. In Crawford County, the Board of County Commissioners pass upon all claims of the fire district in excess of \$50.00, and the commissioners have questioned whether an assistant county attorney is entitled to compensation for this representation, or whether it is a part of the official duties of the office.

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K.S.A. 19-702 states thus:

"It shall be the duty of the county attorney to appear in the several courts of their respective counties and prosecute or defend on behalf of the people all suits, applications or motions, civil or criminal, arising under the laws of this state, in which the state or their county is a party or interested."

K.S.A. 19-3601 states in part thus:

"The board of county commissioners of any county of the state is hereby authorized and empowered to organize one or more fire districts in any portion of the county, not within an incorporated city

The board of county commissioners of the county shall be and constitute the governing body of each fire district within the county."

The county clerk and county treasurer serve as secretary and treasurer, respectively, of such fire districts. You indicate that in this instance, the fire board requested that the action be brought. A district board of trustees is authorized by K.S.A. 19-3612a, thus:

"Whenever a fire district has been established under the provisions of K.S.A. 19-3601 to 19-3606 . . . and the county commissioners determine, by resolution, that it is to the best interests of the county to place the supervision of such fire district under a fire district board of trustees, the said commissioners may appoint a board . . . who shall serve at the pleasure of the commission. The board so established may be vested with all of the powers theretofore vested in the county commissioners, or such supervisory powers as the commissioners may, by resolution, delegate, and the board so appointed may exercise all powers so delegated."

The fire district is not established as a separate political subdivision, but as a county fire district, *i.e.*, an instrumentality

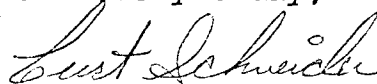
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of the county. The board of county commissioners is its governing body. The board of trustees enjoy only such authority as may be delegated by the board of county commissioners. In short, the county is legally interested in the organization, operation and management of the county fire district, and in my judgment, the county is legally interested in the acquisition of property for use of the district. The fire district is given no separate power of eminent domain, and that which is exercised in its behalf is that of the county. A condemnation action for and in behalf of a county fire district organized under K.S.A. 19-3601 *et seq.* is an action in which the county is legally interested, and is in my opinion an action in which the county attorney is required to provide representation as a part of official duties of the office under K.S.A. 19-702.

In the face of K.S.A. 19-702, it cannot be argued, in my judgment, that a county attorney has no duty to represent the county in any eminent domain action than that specifically prescribed for hospital districts by K.S.A. 19-1806. K.S.A. 19-702 is a general definition of the duties of the county attorney, which encompasses eminent domain actions except when and as the county attorney is specifically relieved by statutory exemption from providing services to the county in such action.

Accordingly, it is my judgment that legal representation provided to a county fire district organized under K.S.A. 19-3601 *et seq.* in an eminent domain action is one in which the county is legally interested, and that such representation does not entitle the county attorney to additional compensation therefor.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. D. J. Saia
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Frontenac, Kansas