



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 2, 1976

ATTORNEY GENERAL OPINION NO. 76- 332

Mr. James M. Immel
Allen County Attorney
Allen County Courthouse
Iola, Kansas 66749

Re: Counties--County Attorney--Duties

Synopsis: The preparation of a resolution respecting the establishment of a county sewer district falls within the statutory duties of the county attorney for which no additional compensation is required.

* * *

Dear Mr. Immel:

You request my opinion whether the county attorney is entitled to additional compensation for preparing a resolution for the board of county commissioners, sitting as the governing body of a rural sewer district, which resolution concerns the use of the system, connections thereto, provides for inspections, establishes sewer connection charges, and provides penalties for violation of the regulations pertaining to use of the sewer.

I enclose a copy of Opinion No. 76-104, in which we considered whether a county attorney was entitled to additional compensation provided in a condemnation suit on behalf of a fire district organized pursuant to K.S.A. 19-3601 *et seq.* We concluded that the fire district was not a separate political subdivision, but merely an instrumentality of the county, and that a condemnation action brought in the name of the county to provide land for a fire station therefor was one in which the county was legally interested. Thus, the county attorney was not entitled to additional compensation for prosecuting that suit.

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Rural sewer districts organized pursuant to K.S.A. 19-2704 *et seq.* are directly analogous to county fire districts. Such sewer districts are created by the board of county commissioners in their capacity as the governing body of the county. They may exercise the eminent domain power of the county for that purpose. In their capacity as county commissioners, they may fix the charges to be assessed for connection to and use of the system. They may issue general obligation bonds of the county to fund certain costs thereof. K.S.A. 19-2705. In preparing a resolution for the board of county commissioners respecting a county sewer district, then, the county attorney does not perform work for any other or separate political subdivision, but acts in respect to the affairs of the county itself.

At Vol. VI, Attorney General Opinions, p. 375, there appears an opinion from Attorney General Londerholm to Mr. Mitchell Bushey, Allen County Attorney, which states thus:

"Sometime ago you asked whether it would be permissible for your county commissioners to pay you a fee for drafting a land use study and zoning regulations.

K.S.A. 19-704 requires the county attorney to give legal opinions and advice to the county commissioners and other civil officers on matters of interest to the county. The task of preparing a land use study and zoning regulations is not, in my opinion, within the scope of giving opinions or advice. It is our opinion, therefore, that the county commissioners may employ the county attorney to perform these tasks and pay him reasonable compensation."

This opinion is unduly restrictive, in our judgment. K.S.A. 19-704 does require the county attorney to "give opinions and advice" to the board of county commissioners and other county officers. As the chief legal officer of the county, however, the responsibilities of the county attorney go further, and historically, that officer has been responsible for the drafting of resolutions, contracts, and other legal documents for the county. The preparation of the sewer resolution in question here constituted the preparation of a legal document required for the conduct of the business of the county, in the creation and administration of a county sewer district and as such, constitutes a service to the board of county commissioners

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which falls within the statutory duties of the office, for which no additional compensation is required.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure