



STATE OF KANSAS

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Attorney General

January 7, 1977

ATTORNEY GENERAL OPINION NO. 77- 8

The Honorable David P. Mikesic
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Courts--Jury Commissioners--Compensation

Synopsis: Associate district judges constitute judges who are entitled to the additional per annum compensation authorized by K.S.A. 1976 Supp. 43-169(a) for service as jury commissioners.

* * *

Dear Representative Mikesic:

On behalf of several Wyandotte County judges, you inquire whether an associate district judge is entitled to receive one thousand five hundred dollars (\$1,500) per annum as compensation for services as jury commissioner.

K.S.A. 1976 Supp. 43-169(a) provides in pertinent part thus:

"In each judicial district consisting of a single county having a population of more than one hundred thousand (100,000) each judge shall receive one thousand five hundred dollars (\$1,500) per annum as compensation for services as jury commissioner.
. . ."

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As you point out, under ch. 146, § 10, L. 1976, effective January 10, 1977:

"There shall be three classes of judges of the district courts established pursuant to K.S.A 20-301, as amended: District judges, associate district judges and district magistrate judges; and as used in this act, the term 'judge of the district court' shall mean any of such judges."

Section 12 of that act describes the jurisdiction of the associate district judge thus:

"An associate district judge shall have concurrent jurisdiction, powers and duties with a district judge, except that an associate district judge shall not have jurisdiction or cognizance of class actions or actions in quo warranto or mandamus. An appeal may be taken from an order or final decision of an associate district judge in the same manner and to the same extent as an appeal may be taken from such order or decision of a district judge."

Although the phrase "judge of the district court," as used in ch. 146, L. 1976, means any of the three classes of judges, it does not necessarily follow that the phrase "judge of the district court" in other enactments is always equally inclusive. It is necessary to look to the whole of such other enactments to determine whether either of the two other classes of judges are subsumed in the broader phrase "judge" or "judge of the district court."

K.S.A. 43-155 *et seq.* is a 1971 enactment dealing broadly with jury service. Principal responsibility for administration of the act is vested in jury commissioners, defined by K.S.A. 43-157(b) thus:

"'Commisisoner' or 'jury commissioner' means the judge or judges of the district court in each county, or a person appointed to serve as jury commissioner by a district court."

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Associate district judges and district judges have substantially concurrent jurisdiction and, you advise, in Wyandotte County it is anticipated that associate district judges will be presiding over jury trials, sharing to a substantial extent the jury trial assignments of the district. Nothing in K.S.A. 43-155 *et seq.* compels the conclusion that the term "jury commissioner" is restricted only to the single class of district judges which existed at the time it was enacted. With the enactment of ch. 146, L. 1976, the term "district judge" or "judge of the district court" as used in other enactments becomes somewhat ambiguous, and it is necessary to look to the intent and purpose of such other legislation to determine the breadth of such phrases in such other legislation. The intent of K.S.A. 1976 Supp. 43-169(a) was to provide additional compensation to judges who bear substantial responsibilities for the administration of the jury provisions of that act. Associate district judges will, under ch. 146, L. 1976, necessarily assume such responsibilities. In view of the fact that associate district judges are now in fact one class of those comprising judges of district courts of this state, and, in addition, a class which will bear the responsibilities of district judges as regards administration of the jury code of this state, it is my judgment that the associate district judges are judges who are entitled to the additional per annum compensation for services as jury commissioners under K.S.A. 1976 Supp. 43-169(a).

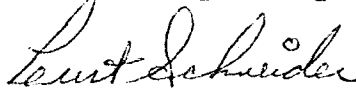
Under ch. 380, § 8, L. 1976, an associate district judge shall receive an annual salary payable from the state in an amount of \$22,000. In addition, any associate district judge may receive from the county general fund such additional compensation as may be recommended by the administrative district judge, subject to final determination by the board of county commissioners of the county, subject to the limitation that in no case shall the total salary of an associate district judge which is payable from both the state and the county exceed an amount equal to ninety-five percent of the annual salary of a district judge.

As a matter of statutory construction, it is not at all clear that the \$1,500 per annum compensation which is paid to a judge for his or her service as a jury commissioner is a part of the annual salary of either an associate district judge or a district judge. As to the latter, *e.g.*, K.S.A. 75-3120g, as amended by ch. 380, § 7, L. 1976, provides that the "annual salary of each of the judges of the several judicial districts of Kansas shall be thirty thousand five hundred dollars (\$30,500)," an amount which does not include compensation for services rendered as jury commissioner. It does not appear in your present inquiry

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that payment of the additional compensation per annum of \$1,500 for services as jury commissioner will increase the total compensation paid to associate district judges to an amount equal to or in excess of ninety-five percent of the annual salary of a district judge, and thus, it is unnecessary to determine herein whether the compensation as jury commissioner may be considered as a part of the legally prescribed salary for either an associate district judge or a district judge.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. James James
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