



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

January 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 36

Mr. Kenneth W. McClintock
Morris County Attorney
418 East Main Street
P. O. Box 224
Council Grove, Kansas 66846

RE: Counties - Sheriffs - Law Enforcement Training Center

SYNOPSIS: The tuition charged by the Law Enforcement Training Center for the attendance of a law enforcement officer shall be paid by the county authorizing such person to attend and this expense cannot be charged over to the officer requiring him to reimburse the county through a contract provision.

* * *

Dear Mr. McClintock:

You inquire whether the board of county commissioners may require a sheriff, undersheriff or deputy to reimburse the county for tuition and other expenses incurred by the county in behalf of such officers for attendance at the Law Enforcement Training Center. Secondly, you inquire whether the board of county commissioners may set a definite salary for such officers, and require each of them to execute a promissory note in the amount of the Training Center tuition and associated expenses, with the stipulation that for each month the officer remains on duty with the county, the payment a pro rata portion of the indebtedness will be forgiven, leading to ultimate forgiveness of the entire debt if the officer serves a prescribed period.

K.S.A. 1976 Supp. 74-5608 provides that a law enforcement officer may not receive permanent appointment as a law enforcement officer until he or she has received a certificate attesting to completion of the basic course of the Center or another certified program of instruction. K.S.A. 74-5609 requires that

Mr. Kenneth W. McClintock
January 28, 1977
Page Two

the tuition for each law enforcement officer "shall be paid by the city, county or state agency authorizing such person to attend the training center"

Generally, the term "shall" in a statute imports a presumption that it is used in a mandatory sense. Clearly, in this instance, a direct obligation rests upon the sponsoring city, county or state agency to bear the tuition costs for each officer authorized by such body. The county may not avoid this duty either directly, or indirectly by seeking to impose that obligation upon another by contract.

Where, as here, the county is under a legal obligation to pay the officers' tuition, it may not impose the responsibility for those costs upon another, including the officers themselves, either directly or indirectly. The effect of the promissory note sought to be required by the county is to require the officers to assume the burden of costs which rests by law with the county itself. There is no consideration for the note or for the county's agreement to forgive all or any portion of that debt based upon the length of the officers' service. The county's promise to do merely that which it is required by law to do is no consideration at all. *Apperson v. Security State Bank*, 215 Kan. 724, 528 P.2d 1211 (1974); *In re Estate of Dahn*, 204 Kan. 535, 464 P.2d 238 (1970); 17 Am.Jur.2d, *Contracts*, §122, p. 468; 17 C.J.S., *Contracts*, §111, p. 829.

Accordingly, it is our opinion that it is the responsibility of the county to pay the officers' tuition to the Law Enforcement Training Center, and that the county may not exact any promise from the officers based upon the county's agreement to assume those costs, to reimburse them or others who in fact pay them, or to forgive any debt based on the payment of such tuition. Thus, in my judgment, the county clerly may not require the officers to reimburse the county for actual expenses, nor may it enter into a contract with the officers requiring them to execute a promissory note in the amount of such costs and providing for the forgiveness or cancellation of all or any portion of such debt based upon the officers' length of service with the county.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:en