



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 5, 1977

ATTORNEY GENERAL OPINION NO. 77-111

Mr. Richard N. Raleigh
Barber County Attorney
Box 248
Medicine Lodge, Kansas 67104

Re: County Officers--County Attorney--Foreclosure Actions

Synopsis: The county attorney may not receive any compensation from the county for prosecuting tax foreclosure actions in addition to that provided for by county resolution as the salary for said office.

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Dear Mr. Raleigh:

You advise that there are numerous tracts of real estate and mineral interests in Barber County which have several years of unpaid taxes accrued against them. The county commissioners wish to commence legal proceedings to enforce the outstanding tax liens. You have indicated your view that your present salary does not readily permit you to devote sufficient time which would be required to prosecute these cases, and you have indicated to the board your willingness to assume responsibility for foreclosing these liens if you were compensated therefor by a percentage of the amount collected. You inquire whether the prosecution of such tax foreclosure actions is among the statutory obligations of the county attorney.

K.S.A. 79-2801 provides that in all cases in which real estate has been or shall be sold and bid in by the county at any delinquent tax sale and shall remain unredeemed for a specified period thereafter, the board of county commissioners

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"shall order the county attorney or county counselor and it shall be the duty of the county attorney or county counselor to institute an action in the district court, in the name of the county commissioners, against the owners or supposed owners of such real estate and all persons having or claiming to have any interest therein or thereto, by filing a petition with the clerk of such court"

It provides further that "[a]ny member of the board of county commissioners or any county attorney or county counselor who shall fail to perform the duties required of him by this section shall forfeit his office."

Thus, the execution of the laws regarding the foreclosure of liens for due and unpaid and delinquent taxes upon real property is a statutory duty of the county attorney "[T]he rule with regard to compensation unquestionably is, that whenever the law requires the county attorney to perform any particular service or duty he cannot receive or recover any compensation for the performance of such service or duty in addition to his salary and the specific fees allowed by statute. Commissioners of Leavenworth County v. Brewer, 9 Kan. 307 (1872). In addition, under K.S.A. 19-704, the county attorney shall, "without fee or reward, give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested by such board or officers, upon all matters in which the county is interested, or relating to the duties of such board or officers"

Under K.S.A. 19-723, the board of county commissioners may, if they deem appropriate, employ an additional attorney to assist the county attorney in any specific matter involving the duties of the county attorney. However, if you as county attorney are required to undertake the prosecution of the foreclosure actions, no compensation may be paid by the county for those services in addition to the salary provided by county resolution for your office.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj