



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

May 13, 1977

ATTORNEY GENERAL OPINION NO. 77- 160

Mr. S. Philip Stover
Gove County Attorney
Gove County Courthouse
Gove, Kansas 67736

Re: Counties--Officers--Travel Expenses

Synopsis: A county attorney who conducts substantial county business in his private office located several miles from the courthouse, and who travels to the courthouse for meetings with the board of county commissioners and for court appearances and conducts limited county business in his courthouse office, is not required by K.S.A. 28-169 to be allowed actual and necessary expenses or mileage for such travel from his domicile or private office to the courthouse to conduct county business.

* * *

Dear Mr. Stover:

K.S.A. 28-169 provides thus:

"In any county having a population of 80,000 or less, the board of county commissioners shall allow any county officer, deputy or employee his actual and necessary traveling expenses incurred in the performance of his duties and shall allow mileage to any such officer, deputy, or employee at the rate prescribed by law for each mile actually and necessarily traveled in a privately owned vehicle in the performance of his duties."

Mr. S. Philip Stover
Page Two
May 13, 1977

In response to your first question, a county attorney is indeed a "county officer" within the scope of this provision.

You ask, secondly, what types of expenses are considered to be "actual and necessary travelling expenses incurred in the performance of his duties" You advise that as Gove County Attorney, you maintain a private office in Quinter, where you conduct the major portion of county business. However, court appearances and meetings with the county commissioners are held at the county seat in Gove, approximately 26 miles away. The county does provide an office in the courthouse at Gove, but you indicate that it is used on a very limited basis.

You question whether, because you travel to Gove for court appearances on an as-necessary basis and not as a full-time county employee whose work is done entirely in the courthouse, you should be allowed mileage under K.S.A. 28-169. This section has not historically been construed to authorize the payment of mileage to a county officer or employee for travel from his or her domicile to official station, e.g., to and from home and the courthouse. It has been construed to authorize payment of or reimbursement for actual and necessary expenses for travel from one's official station in the performance of one's duties. In your circumstances, you conduct much county business from your own private office, as a matter of convenience and efficiency. However, travel from your private office to the courthouse is in my judgment analogous to travel to the courthouse from your domicile. It is travel to your official station i.e., the courthouse, for the conduct of county business, rather than from the courthouse on county business.

Thus, in my opinion the commissioners would be acting within their authority in refusing to allow mileage and expenses under K.S.A. 28-169 for the travel described above.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj