



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 12, 1977

ATTORNEY GENERAL OPINION NO. 77-225

Mr. Brainard L. Anderson
Greeley County Attorney
511 Second Street
Tribune, Kansas 67879

Re: Counties--Home Rule--Mileage

Synopsis: With the repeal of K.S.A. 1976 Supp. 28-810 by the 1976 Legislature, the board of county commissioners may provide in the exercise of home rule power for the payment of mileage to members of the board, and the rate of such mileage, which may be greater or lesser than the rate fixed by the Secretary of Administration pursuant to K.S.A. 1976 Supp. 75-3203.

* * *

Dear Mr. Anderson:

House Bill 2532, enacted by the 1977 legislature, repealed K.S.A. 1976 Supp. 28-810, subsection (b) of which provided thus in pertinent part:

"The county commissioners, in all counties, shall be allowed and receive mileage payable under section 2 [75-3203a] of 1974 Senate bill No. 733 and amendments thereto for each mile actually and necessarily traveled in the transaction of any of the duties of said office"

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K.S.A. 1976 Supp. 75-3203(a) provides in pertinent part thus:

"Wherever in the statutes of the state of Kansas any mileage is allowed to any public official of the state or any of the municipal subdivisions thereof . . . the rate thereof shall be in the amount fixed and established by the secretary of administration The governing body of any county . . . may prescribe a rate lower than that provided for in this section as to officers and employees of such county"

This section was not repealed by the 1977 legislature. In view of the sentence quoted above, that the governing body may prescribe a rate lower than that prescribed by the section, the question arises whether the board of county commissioners may in the exercise of its home rule powers prescribe a rate greater than that fixed by the Secretary of Administration.

K.S.A. 1976 Supp. 19-101a states in pertinent part thus:

"(a) Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate

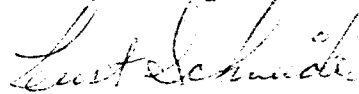
(b) Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper."

With the repeal of K.S.A. 1976 Supp. 28-810, there exists no statutory authority respecting mileage payable by the county to its commissioners unless K.S.A. 1976 Supp. 75-3203(a) constitutes applicable statutory authority. The rate fixed by that section applies only "[w]herever in the statutes of the state of Kansas

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any mileage is allowed to any public officer of the state or any of the municipal subdivisions thereof" It is not, in and of itself, authority for the payment of mileage. Rather, it prescribes that the rate fixed by the Secretary of Administration shall govern whenever another statute provides that mileage shall be paid. Thus, the direction that the "governing body of any county . . . may prescribe a rate lower than that provided for in this section as to officers and employees of such county" no longer applies to county commissioners, because there is no longer any statute authorizing payment of mileage to said officers. As stated above, the rate fixed by K.S.A. 1976 Supp. 75-3203 applies only when there is independent statutory authority for the payment of mileage. There being no such statutory authority now, that rate is no longer applicable, and the board of county commissioners may, in the exercise of its home rule powers under K.S.A. 1976 Supp. 19-101a(b), provide by resolution for the payment of mileage to the commissioners, and in so doing, adopt a rate which the board deems appropriate.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj