



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

December 9, 1977

ATTORNEY GENERAL OPINION NO. 77- 387

Mr. Dennis W. Moore
District Attorney
Johnson County Courthouse
Post Office Box 728
Olathe, Kansas 66061

Re: Counties--County and District Attorneys--Compensation

Synopsis: Payments to county and district attorneys pursuant to ch. 119, L. 1977, for representation of the state in criminal and post-conviction appeals from the district courts of the state should be regarded as salary rather than independent contractual payments, and are thus subject to withholding requirements for OASI and like purposes.

* * *

Dear Mr. Moore:

Ch. 119, § 1, L. 1977, states thus:

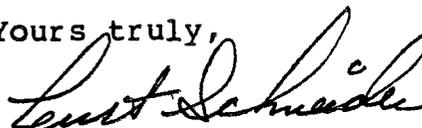
"In representing the interests of the state in appeals from criminal actions in the district courts of this state to the supreme court or court of appeals or in other post-conviction actions arising from criminal prosecutions, the attorney general shall invoke the assistance of the county or district attorney of the county in which the action originally commenced. The reasonable costs of such assistance shall be allowed and paid by the board of county commissioners from the county general fund for any services rendered by such county's county or district attorney pursuant to this section."

Mr. Dennis W. Moore
Page Two
December 9, 1977

For many years, legal responsibility to represent the state in appeals from criminal actions in the district courts of the state has rested with this office, pursuant to a long line of decisions of the Kansas Supreme Court, which were reviewed in Opinion No. 75-43. At the same time, it has long been the custom of county and district attorneys actually to present such cases, without the active participation of this office, and the costs of such representation has been provided by the counties. In 1975, the board of county commissioners of Phillips County refused to pay compensation to the county attorney of that county for representation of the state in criminal and post-conviction appeals from the district court of that county. As a result of that refusal, this office took over the handling of those appeals. However, if this position were to be taken by a growing number of counties, and insisted upon at length by the Phillips County board, the resulting burden on this office could well have disrupted the orderly and prompt processing of such appeals. In order to forestall such an occurrence, the legislature enacted the section quoted above.

As a result of this enactment, when a county or district attorney represents the State of Kansas in an appeal from a criminal action in the district court of the state to an appellate court, he or she does so because it is an official duty of the office. Withholding is required, of course, from any compensation which is paid to a public officer for performance of the official duties of the office. Thus, the moneys which are paid by the board of county commissioners under this section are paid for services provided to the Attorney General by the county or district attorney in his or her official capacity, and constitutes salary from which withholding is required to be made. While formerly these payments were properly characterized as contractual in nature, because the county or district attorney was not required to provide such representation as a part of his or her official duties, the 1977 enactment changes both the nature of the services rendered, constituting them an official responsibility of the office, and the nature of the compensation paid therefor, which must now be treated as salary rather than an independent contractual arrangement.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Gerald Slaybaugh