



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 17, 1978

ATTORNEY GENERAL OPINION NO. 78-21

The Honorable Samuel I. Mason
District Magistrate Judge
Bourbon County Courthouse
Fort Scott, Kansas 66701

Re: Courts--Judges--Salaries

Synopsis: Any amount which a district magistrate judge receives as salary per annum in excess of that required by K.S.A. 1977 Supp. 20-351(b), as recommended by the administrative judge of the judicial district pursuant to K.S.A. 1977 Supp. 20-351(c), is subject to the final approval of the board of county commissioners. Monies granted to the county for the purpose of defraying the cost of salaries of district magistrate judges, pursuant to ch. 110, § 12(a)(3), L. 1977, may be applied to payment of the salary as fixed by statute, and need not be applied to the payment of any increase above such amount.

* * *

Dear Judge Mason:

I have your letter of January 10, 1978, concerning provision which was made in the budget of the district court for your salary for fiscal 1978. You enclose a photocopy of page 1 of Form No. JA 101, which was submitted by the administrative judge to the board of county commissioners in July, 1977. You indicate that the board reduced the total amount of the budget of \$2,500 and approved it as thus reduced, although they did not indicate any line item which was specifically reduced. Your salary is typewritten on the form as \$16,500, and a pencilled interlineation, which you indicate was added by the district court clerk, indicates your

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salary as \$15,500. You state that on January 5, 1978, as magistrate judge, you received a raise of \$35 per month, which you advise is in disregard of the budget which was submitted to the board of county commissioners by the administrative judge.

K.S.A. 1977 Supp. 20-351(b) states thus:

"Any district magistrate judge that was serving as a judge of a state court of limited jurisdiction immediately preceding January 10, 1977, shall receive an annual salary payable from the general fund of the county in which such judge resides in an amount equal to the salary such judge was receiving as judge of the state court of limited jurisdiction; all other district magistrate judges in any such county shall receive the same salary from the county in which such judge resides as district magistrate judges that served as a judge of a state court of limited jurisdiction immediately preceding January 10, 1977."

Thus, the salary to which you are entitled to receive by statute is that prescribed by this section. However, subsection (c) of this section authorizes the county to supplement that amount thus:

"(c) In addition to the salary authorized by subsection (b) a district magistrate judge may receive from the county general fund in which such judge is regularly assigned, such additional compensation as may be recommended by the administrative district judge of the judicial district, subject to final determination by the board of county commissioners of such county."

You indicate that your salary was fixed, under the provision cited above, at \$13,000, the amount to which you are statutorily entitled and which may not be reduced by the board of county commissioners. With the increase of \$35 per month effective January 1, 1978, you indicate that your salary will be \$14,400 per annum, an increase which does not appear to reflect the full amount of the sum granted

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to the county under 1977 legislation to defray the cost of your salary. Ch. 110, § 12(a)(3), L. 1977, states in pertinent part thus:

"In addition to the grants provided for in paragraphs (1) and (2) of this subsection, grants shall be made to each county having a district magistrate judge, for the purpose of defraying the cost of salaries of such judges, at the rate of four thousand three hundred and ninety-five dollars (\$4,395) per district magistrate judge on January 10, 1977
....."

Based on the figures above, you are receiving, as you indicate, very little of the sum of \$4,395 in the form of any additional compensation authorized by the county in excess of that required by statute. However, the stated sum is to be applied "for the purpose of defraying the cost of salaries of" the district magistrate judges, and is not required by the statute to be applied to any portion of the salary of a district magistrate judge which is in excess of the amount required to be paid by K.S.A. 1977 Supp. 20-351(b).

Thus, if, as appears, the administrative judge did recommend to the Bourbon County board of county commissioners an annual salary for your position in excess of that required by K.S.A. 1977 Supp. 20-351(b), such additional amount is payable from the county general fund, and that portion of the recommended salary which is in excess of the statutory sum is payable only in the discretion of the board of county commissioners. We have no information as to what particular action the board took upon the recommended budget other than that set out above. It is sufficient here, in responding to your question, to point out that the board is vested under K.S.A. 1977 Supp. 20-351(c) with the discretionary power to approve or disapprove any increased salary recommendation which is payable from the county general fund. Apparently, the board did disapprove any increase in excess of \$35 per month, which is within its statutory authority.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj