

STATE OF KANSAS

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*Curt T. Schneider*  
*Attorney General*

June 16, 1978

ATTORNEY GENERAL OPINION NO. 78-195

Mr. Gerald C. Golden  
Meade County Attorney  
Meade County Courthouse  
Meade, Kansas 67864

Re: Courts--Salaries--District Magistrate Judges and Clerks

Synopsis: The budget of the district court as finally adopted by the board of county commissioners must include line item amounts identifying the compensation paid for each job position in the budget. The amounts so identified constitute both an appropriation thereof and a legal prescription of the salary to be paid such positions during the budget year. Neither the board of county commissioners nor the administrative judge may reduce or increase the salary of the clerk of the district court or of any other nonjudicial employee of the court below or above the amount prescribed in the budget.

\* \* \*

Dear Mr. Golden:

You inquire concerning the salaries of magistrate judge and the clerk of the District Court of Meade County.

You enclose a copy of the budget of the unified courts of Meade County for 1978, as submitted by the administrative judge and approved by the board of county commissioners. It prescribes an annual salary of \$8,000 for the clerk and the sum of \$5,700 for deputy clerk salaries. You advise that since that time, the board of county commissioners has advised the clerk of the district court that it intends to reduce the salary of the clerk to \$7,700 per year, and to increase the annual salary of the deputy to \$5,700 to \$6,233.52 per annum.

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K.S.A. 1977 Supp. 20-343 authorizes the administrative judge, with the approval of a majority of the other district judges of the judicial district, to appoint the chief clerk of the district court of the judicial district, and authorizes the administrative judge to appoint such deputies, assistants and other clerical personnel as may be necessary to perform the duties of the office of the clerk in each county in the judicial district. This statute makes no provision for fixing the salaries of such personnel. K.S.A. 1977 Supp. 20-345 authorizes the administrative judge, again with the approval of a majority of the other district judges of the district, to appoint bailiffs, court reporters, secretaries, parole and probation officers and other clerical and nonjudicial personnel as are deemed necessary. This section goes on to state thus:

"Persons appointed pursuant to this section shall have qualifications as may be prescribed by law or rule of the supreme court. Except as otherwise provided by law, such persons shall receive compensation in the amount provided for in the district court budget."  
[Emphasis supplied.]

The phrase "such persons" extends only to "[p]ersons appointed pursuant to this section," i.e., K.S.A. 1977 Supp. 20-345, which does not include clerks and deputy clerks of the district court, who are appointed pursuant to K.S.A. 1977 Supp. 20-343. Thus, there is no express statutory authority dealing specifically with the salaries of the clerk and deputy clerk.

Provision for those salaries is then made through the general budgeting procedures applicable to the district court budget. K.S.A. 1977 Supp. 20-349 outlines those procedures in pertinent part thus:

"The administrative judge in each judicial district shall be responsible for the preparation of the budget to be submitted to the board of county commissioners of each county. The board of county commissioners shall then have final authority to determine and approve the budget for district court operations payable by their county. The judicial administrator of the courts shall prescribe the form upon which such budgets shall be

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submitted. The budget shall include all expenditures payable by the county for operations of the district court in such county. A separate budget shall be prepared for each county within the district and the judges of the district court shall approve the budget for the county in which said judges are regularly assigned prior to submission of said budget to the board of county commissioners. Except for the compensation of employees provided for in subsection (b), the compensation to be paid to district court personnel whose total salary is payable by counties shall be listed in the budget as a separate item for each job position. After the amount of said district court is established, the expenditures under said budget, other than expenditures payable by the county for salaries and compensation of associate district judges and district magistrate judges and expenditures for job positions contained in the budget, shall be under the control and supervision of the administrative judge, subject to supreme court rules relating thereto, and the board of county commissioners shall approve all claims submitted by the administrative judge within the limits of said district court budget."  
[Underscored language added by 1977 amendments.  
Ch. 110, § 4, L. 1977.]

The underscored language was added by amendment in 1977 for the purpose of giving boards of county commissioners a greater voice in fixing the salaries of court personnel which were paid from county funds. The compensation payable to district court personnel which is derived from county funds is required to be listed as a separate item for each job position, and the board of county commissioners has final authority to determine and approve the budget, save that the board may not decrease it below the level of support of calendar 1976. Save for this floor, the board is given broad power to review and amend the budget submitted by the administrative judge, including proposed salaries paid to court personnel from county funds. The budget thus adopted governs the salaries paid to "bailiffs, court reporters, secretaries, parole and probation officers and other clerical and nonjudicial personnel" who are appointed by the administrative judge pursuant

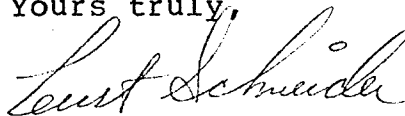
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to K.S.A. 1977 Supp. 20-345. A separate statute, K.S.A. 1977 Supp. 20-343, provides for the appointment of the district court clerk, and "such deputies, assistants, and other clerical personnel as may be necessary to perform the duties of the office of clerk . . . ." This latter statute makes no express provision, indeed no provision whatever, for fixing the salaries of the clerk and others appointed thereunder.

Absent an express provision in K.S.A. 1977 Supp. 20-343, fixing the salary of the clerk, the fixing of that salary must be determined by reference to other provisions of the act. Clearly, under K.S.A. 1977 Supp. 20-349, the budget is the central feature in the financial operation of the court. The salary of the clerk, appointed under K.S.A. 1977 Supp. 20-343, just like the salary of the court reporter appointed under K.S.A. 1977 Supp. 20-345, must be identified by a line item in the budget. Just as the budget fixes the salary which is payable to the court reporter for the budget year, likewise in my judgment it fixes the salary which is payable to the court reporter. The budget constitutes both an appropriation of monies to pay the salary and a legal prescription of what the salary shall be. Under the 1977 amendment to K.S.A. 1976 Supp. 20-349, expenditures under the budget, except, insofar as here pertinent, "expenditures for job positions contained in the budget," are under the control of the administrative judge. Expenditures for job positions are not under the control of the administrative judge, nor are they under the control of the board of county commissioners. The board's voice in fixing the salaries of court personnel who are paid from county funds is exercised at the time the board reviews, amends and adopts the budget which is submitted to it by the administrative judge. Once adopted, the compensation prescribed in the budget for each job position becomes the salary required by law to be paid for each such position, and neither the administrative judge nor the board of county commissioners may alter that salary, except as the budget may be amended during the year. [See Opinion No. 78-65.]

Accordingly, it is my opinion that the board of county commissioners may not reduce the salary of the clerk of the district court below the amount duly and lawfully budgeted for that position, nor may the board, during the calendar year, increase the salary of the clerk above the budgeted amount, save and except when and as the budget may be amended after notice and public hearing thereon during the year, as provided in Opinion No. 78-65. The board may not reduce the salary of the district magistrate judge below that prescribed by K.S.A. 1977 Supp. 20-351(b).

Yours truly,



CURT T. SCHNEIDER  
Attorney General