

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 11, 1978

ATTORNEY GENERAL OPINION NO. 78-261

Mr. Terry V. Brown
President
Southeast Kansas Appraisers Association
Montgomery County Courthouse
Independence, Kansas 67301

Re: Counties--Appraisers--Employees

Synopsis: Although a board of county commissioners has no statutory authority to terminate the appointment of specialized assistants appointed by the county appraiser, to which the board has given its advice and consent, the board retains substantial authority over the compensation paid such personnel, and thus may virtually compel the termination of such appointments indirectly by the exercise of its statutory authority over such appointees' salaries.

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Dear Mr. Brown:

As Montgomery County appraiser, you inquire concerning the authority of the board of county commissioners to dismiss employees of the appraiser's office. You indicate that you also serve as president of the Southeast Kansas Appraisers Association, and the question has been prompted in that area by the action of the Labette County board of county commissioners dismissing an employee of the county appraiser's office of that county, whom that appraiser regarded as an extremely qualified and diligent employee.

K.S.A. 1977 Supp. 19-425 provides in pertinent part thus:

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"He [the county appraiser] shall appoint deputy appraisers and fix their salaries with the consent and approval of the board of county commissioners or district board. Each deputy appraiser, before entering upon the duties of his office, shall take and subscribe to an oath in like manner as that provided for the county or district appraiser. With the consent and approval of the board of county commissioners or district board, he may appoint such specialized help as he may need to properly assess specific properties and may pay them such compensation as the board of county commissioners or district board shall provide. The board of county commissioners or district board shall furnish him necessary office space and such clerical help as may be needed to carry out the duties of his office."

As you point out, the Kansas legislature has done much to upgrade the professional status of county appraisers in this state. In addition to raising the professional standards and qualifications of assessing personnel, the legislature has prescribed a protective procedure governing the suspension and termination of county and district appraisers. A board of county commissioners may suspend or terminate an appraiser only on the ground that the appraiser has failed or neglected to perform the duties of the office, due to incompetency or any other cause. An appraiser whom a board has sought to suspend or terminate may appeal its decision to the director of property valuation. Thus, the county appraiser is able to perform the duties of the office in a more professional and objective manner, with a measure of freedom from the vagaries of political influence and favoritism which might distort the fairness and uniformity of the appraisal process.

However, no similar protection is afforded the staff of county and district appraisers. The appraiser may appoint specialized assistants only with the advice and consent of the board of county commissioners, and may pay such assistants only such compensation as the board of county commissioners may provide. Likewise, the board furnishes such clerical help as it deems necessary to assist in the performance of the duties of the office. When an appraiser does appoint an assistant or deputy, with the advice and consent of the board of county commissioners, the appointee does not serve for a fixed term of office, nor does he or she have any contractual

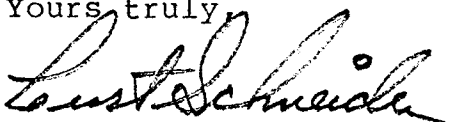
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claim to the position for a given period of time. The appraiser is the sole person authorized to appoint assistants for his or her office, but the appointment power may be exercised only with the advice and consent of the board of county commissioners. Just as the board has no power to make the appointment in the first instance, it has, in my judgment, no authority to terminate an appointment which the appraiser has made and to which it has given its advice and consent. The appointing authority is expressly vested in the appraiser personally. A correlative of the power of appointment, vested in the appraiser, is the power to terminate appointments made by that officer. Just as the board has no power to make appointments of assistants in the appraiser's office, it has no power to terminate such appointments which the appraiser has made, and to which it has given its advice and consent.

However, the compensation which may be paid to persons appointed by the appraiser is limited to "such compensation as the board of county commissioners shall provide." Although the board has no statutory authority to terminate an appointment made by the appraiser, it does not control over the compensation paid to such employees. It may be argued, certainly, that the board should not be permitted to do indirectly what it may not do directly, i.e., that it may not terminate an employee of the appraiser by refusing to approve compensation to be paid to that employee, when it has no authority to fire the employee directly. Nonetheless, so far as the statutory scheme is concerned, the board does retain the authority to fix the compensation of employees of the appraiser, and in the exercise of this authority, may obviously virtually compel the termination of a given employee by its authority over the salary for the position.

Obviously, in the interests of the professionalization of the county appraisers' offices which the legislature has sought to enhance, it is equally important that the staff of that office be insulated so far as practicable from threats of political retaliation and reprisal as that the appraiser himself or herself be so protected. Toward this end, it may be desirable to consider legislation which gives the appraiser substantial independent authority over the budget finally approved for that office, similar to that provided for district court budgets by K.S.A. 1977 Supp. 20-349 during the transition to court unification. This or comparable legislation may be needed to assure appraisers' offices independence and objectivity which the legislature intended they should have.

Yours truly,



CURT T. SCHNEIDER
Attorney General