



STATE OF KANSAS

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October 30, 1978

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ATTORNEY GENERAL OPINION NO. 78- 351

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

Re: Courts--Salaries--State Responsibility

Synopsis: Effective January 1, 1979, the State of Kansas assumes the payment of salaries of district magistrate judges, and the amount to be paid by the state is the amount duly budgeted for such position in the 1978 calendar budget, and not any lesser amount which may in fact be paid due to administrative county action to authorize payment of less than the budgeted salary.

* * *

Dear Judge Mason:

We have your letter of October 25, 1978, with enclosures, concerning the compensation which you are entitled to receive from the State of Kansas commencing January 1, 1979.

Ch. 350, § 14, L. 1978, provides in pertinent part thus:

"(a) Subject to the provisions of subsection (b), the annual compensation of district magistrate judges shall be paid by the state in the amount of fourteen thousand dollars (\$14,000), except that the district magistrate judge in position one of Atchison county shall receive one-half (1/2) of such amount.

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(b) Any district magistrate judge currently receiving compensation in an amount greater than the compensation provided for in subsection (a) shall continue to receive such greater compensation, but any successor to such judge's position shall receive compensation as provided in subsection (a)."

The 1978 calendar year budget, however, which was filed with the Judicial Administrator, and as approved by the Bourbon County board of county commissioners, prescribes an annual salary of \$16,500.00. Notwithstanding this budgeted amount, we understand you are now receiving a per annum salary of \$14,573.04. The reason for this reduced payment, below the budgeted amount is not clear, although it may be due to administrative action of the board of county commissioners to approve salary payments in amounts less than those budgeted.

In Opinion No. 78-195, we concluded that the amount budgeted for payment of salaries of court personnel, including that of the district magistrate judge, as set out in the budget duly adopted by the board of county commissioners pursuant to K.S.A. 1977 Supp. 20-349, constitutes both a legislative prescription of the salary to be paid and an appropriation of monies for that purpose. Thereafter, we concluded, the board of county commissioners had no authority to change the salaries so fixed, except by formally amending the 1978 budget.

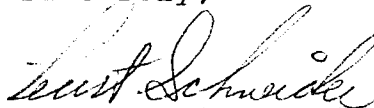
Where, as here, the amount you are actually receiving is less than the budgeted amount, the question is presented whether, effective January 1, 1979, the state shall pay the budgeted salary or the lesser amount. In my opinion, the amount which you are entitled to receive effective January 1, 1979, from the State of Kansas is the salary you are lawfully entitled to receive from the county, *i.e.*, the amount duly budgeted, and not any lesser amount. As stated above, the reason why the full budgeted amount is not now being paid does not appear in the material you enclose. After approving and adopting a budget fixing the salary for your position, the board of county commissioners retained no continuing administrative control to review and reduce or increase the salary for your office, except by formally amending the budget. There has been no such amendment in this instance. While you are receiving a lesser amount than that budgeted, the state is required, in my view, to pay, effective January 1, 1979, the salary which is lawfully prescribed for your office, that being the budget

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sum of \$16,500, and assumes responsibility therefor, notwithstanding any administrative action at the county level, which is entirely without statutory support, to reduce the amount actually paid below budgeted amount.

Accordingly, in my judgment, your per annum salary to be paid by the state effective January 1, 1979, will be the amount of \$16,500.

Sincerely,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. R. G. Henley
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Kansas Judicial Center
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