

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

April 9, 1979

ATTORNEY GENERAL OPINION NO. 79- 52

Sheriff Daryl L. Thornburg  
104 South 5th  
Osborne, Kansas 67473

re: Labor and Industries -- Minimum Wage and Maximum Hours --  
Overtime Compensation

Synopsis: K.S.A. 1978 Supp. 44-1204, prescribing the payment of overtime compensation, is applicable to county employees, although its specific applicability to personnel in the sheriff's department depends on whether such personnel are engaged in law enforcement activities and whether part-time personnel are "employees" entitled to overtime compensation, by virtue of K.S.A. 1978 Supp. 44-1202(e) (6) and (h).

\*

\*

\*

Dear Sheriff Thornburg:

In your letter of March 5, 1979 you have requested our opinion as to whom is eligible for overtime compensation among the employees listed in your letter.

The payment of overtime compensation to employees is governed generally by the Minimum Wage and Maximum Hours Law, as contained in K.S.A. 1978 Supp. 44-1201 et seq. In Attorney General Opinion No. 78-123 the term "employer," defined in subsection (d) of K.S.A. 1978 Supp. 44-1202, was construed to include counties. We concur with that opinion and, as a result, find that the payment of overtime compensation to county employees is governed by K.S.A. 1978 Supp. 44-1204, the pertinent provisions of which read as follows:

Sheriff Daryl L. Thornburg  
Page Two  
April 9, 1979

"(a) On and after January 1, 1978, no employer shall employ any employee for a workweek longer than forty-six (46) hours, unless such employee receives compensation for employment in excess of forty-six (46) hours in a workweek at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which such employee is regularly employed."

"(b) No employer shall be deemed to have violated subsection (a) with respect to the employment of any employee who is covered by this section, who is engaged in fire protection or law enforcement activities, including any member of the security personnel in any correctional institution, and who is paid compensation at a rate of not less than one and one-half (1-1/2) times the regular rate at which such employee is employed:

"(1) In any work period of twenty-eight (28) consecutive days in which such employee works for tours of duty which in the aggregate exceed two hundred fifty-eight (258) hours; or

"(2) In the case of any such employee to whom a work period of at least seven (7) but less than twenty-eight (28) days applies, in any such work period in which such employee works for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in such work period as two hundred fifty-eight (258) hours bears to twenty-eight (28) days."

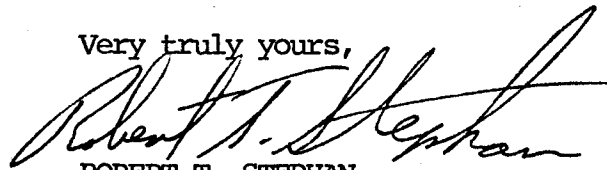
In your letter you have indicated that the sheriff's department consists of one (1) sheriff, one (1) undersheriff, four (4) full-time dispatchers and two (2) part-time dispatchers. It is unclear from your letter whether the sheriff's salary is established according to statutory provisions or by the county commissioners. In either event, it is our opinion that the overtime provisions of K.S.A. 1978 Supp. 44-1204 are inapplicable to the sheriff since he is an elected official. The salary of an elected official is an incident of the office and not specifically payment for services rendered. As an example, if an elected official becomes ill and is not able to perform the duties of the office, the salary provided for the office must still be paid until the official resigns or relinquishes the office. Thus, the sheriff cannot be viewed as an employee subject to overtime compensation.

Sheriff Daryl L. Thornburg  
Page Three  
April 9, 1979

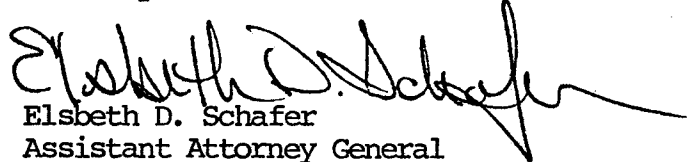
The overtime compensation allowed to the undersheriff is governed by K.S.A. 1978 Supp. 44-1204(b) since he is engaged in law enforcement activities. Further, based on our understanding that the dispatchers are employed in a civilian capacity, they would be governed by the provisions of K.S.A. 1978 Supp. 44-1204(a), although the combined provisions of subsections (e) and (h) of K.S.A. 1978 Supp. 44-1202 exclude certain part-time people from the definition of employee. From your letter, though, it is unclear if any of the exclusions are applicable to the two (2) part-time dispatchers; however, assuming these exclusions are inapplicable, it is our judgment that K.S.A. 1978 Supp. 44-1204(a) would also govern the payment of overtime compensation to the part-time dispatchers.

Attached is a copy of Attorney General Opinion No. 78-123 for your information.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Elsbeth D. Schafer  
Assistant Attorney General

RTS:TDH:EDS:may