



STATE OF KANSAS

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November 16, 1979

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ATTORNEY GENERAL OPINION NO. 79-264

The Honorable W. Edgar Moore
State Representative, 26th District
2103 West 127th Street
Olathe, Kansas 66061

* but see
K.S.A. 19-269

Re: Counties and County Officers--Fees and Salaries--
Advances on Travel Expenses

Synopsis: K.S.A. 1978 Supp. 19-101a et seq. grants the board of county commissioners the power to transact county business and thereby authorizes them to deal with personnel matters involving county employees, including the payment of travel expenses in advance. However, this power is subject to any state enactments applicable uniformly to all counties.

* * *

Dear Representative Moore:

In your letter of July 12, 1979, you seek the opinion of this office on the question of whether certain employees may be advanced money for their travel expenses, and then be required to give an accounting (and presumably return any surplus) when they return. You have subsequently clarified the scope of your request, indicating that it concerns county officials, such as the sheriff, and other county employees.

K.S.A. 1978 Supp. 19-101a (as amended by L. 1979, ch. 52, §9) confers upon each county the power, to be exercised by the board of county commissioners,

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"to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject to the following limitations, restrictions or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties"

(The eight other enumerated statutory limitations are omitted here, for they are not pertinent to the question you raise.)

Elected county officials hold positions which are statutory in nature, as may other deputies or employees. See, e.g., K.S.A. 1978 Supp. 19-805a, regarding sheriff's deputies in counties such as Johnson County. Other county employees may hold jobs which are created solely by the authority of the county. In either case, however, the board of county commissioners is empowered to adopt local legislation, regarding the conduct of county business, as it deems appropriate and necessary. The adoption of policies for the reimbursement of travel expenses is certainly properly a matter of "county business." In the formulation and adoption of such policies, the board of county commissioners is free, under K.S.A. 1978 Supp. 19-101a (as amended), to enact both legislative and administrative standards and directives governing that position.

The above power is, of course, subject to acts of the legislature which apply uniformly to all counties. From our examination of the statutes, we find no provisions which deal with travel expense reimbursement policies which are applicable to a county the size of Johnson County. However, this may not be the case when specific county officials are considered. For example, K.S.A. 28-110 deals in part with the reimbursement of sheriffs for travel expenses incurred in the performance of certain enumerated duties. We note that the following language appears therein:

"And provided further, That no mileage shall be taxed or allowed and no person shall be required to pay any mileage unless at the time of making returns the sheriff shall make and file with his returns, or as a part thereof, a statement showing the distance actually and necessarily traveled in making service . . . , and the distance actually and necessarily traveled by the sheriff in making such service shall clearly appear; . . . : And further

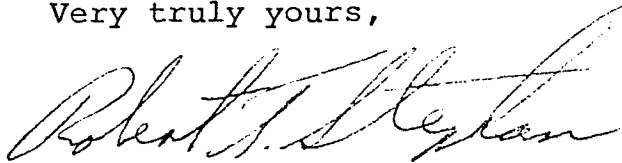
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provided, That the sheriff shall receive, in addition to the compensation allowed him by this act, for serving under requisition made by the governor, his necessary transportation and board actually paid out for himself and prisoner." (Emphasis added.)

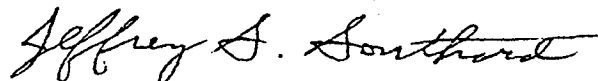
It would appear from the above that the Legislature has determined that, at least in the above areas, a sheriff should be reimbursed only after the expenditures have been made. As this is a uniform measure equally applicable to all counties, the Johnson County Commissioners could not substitute a local law for it, even by charter ordinance.

Apart from some limited exceptions such as that mentioned above, it would be our opinion that the board of county commissioners does have the authority pursuant to K.S.A. 1978 Supp. 19-101a et seq., to establish policies providing for the payment of advance money to county employees. This conclusion is in agreement with a previous opinion of this office on the same subject, No. 78-363, a copy of which is enclosed for your information.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk

Enclosure: Attorney General Opinion No. 78-363