



STATE OF KANSAS

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June 5, 1980

ATTORNEY GENERAL OPINION NO. 80-121

Ms. Mary Alice Horsch  
Sedgwick County Conservation District  
4100 Maple  
Wichita, Kansas 67209

Re: Counties and County Officers -- County Counselor --  
Duties Regarding Conservation Districts

Synopsis: Upon the appointment of a county counselor, all duties in civil matters otherwise required by law of the county attorney pass to the county counselor. The county counselor is responsible for rendering legal services to conservation districts. Cited herein: K.S.A. 2-1901, K.S.A. 1979 Supp. 2-1907, 2-1908, 19-101a, K.S.A. 19-247 and 19-248.

\* \* \*

Dear Ms. Horsch:

You have requested our opinion regarding whether the county attorney or the county counselor is responsible for providing legal services to conservation districts.

K.S.A. 19-247 states thus:

"The county counselor shall, when requested by the board of county commissioners, or when it may be necessary, attend the meetings of such board, and shall give his advice upon all legal questions that may arise, and assist the board

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on all legal matters as may be referred to him; commence, prosecute or defend, as the case may require, all civil suits or actions in which the county is interested, represent the county generally in matters of civil law; draw all contracts or other papers required by the said board, and furnish to said board when requested by it to do so, opinions in writing upon legal matters pending before said board; and shall perform all the duties in civil matters that have heretofore been required by law of the county attorney of such counties." (Emphasis added.)

K.S.A. 19-248 specifies the effect of an appointment of a county counselor upon the duties of the county attorney:

"Upon and after the appointment of such county counselor, the county attorney shall not be required to represent said counties in any civil actions or business, excepting, however, tax foreclosure suits in [certain counties], . . . but nothing herein . . . shall be construed to limit, qualify or in any manner affect the duties of said county attorney in any criminal actions or business, and said county attorney shall continue to discharge such duties in all criminal matters as they are now required by law to do. . . ."

Previously, K.S.A. 19-246 authorized the appointment of county counselors in certain counties. However, that section has been repealed (L. 1975, Ch. 154, §1) and it is our understanding that the appointment of a county counselor is now accomplished by the board of county commissioners through the exercise of its statutory home rule powers under K.S.A. 1979 Supp. 19-101a. Once a county counselor is appointed, the powers and duties of the person so appointed are expressly enumerated by statute, K.S.A. 19-247.

The Conservation District Law, K.S.A. 2-1901, et seq., as amended, provides for the organization and administration of conservation districts.

Specifically, K.S.A. 1979 Supp. 2-1907 provides in part:

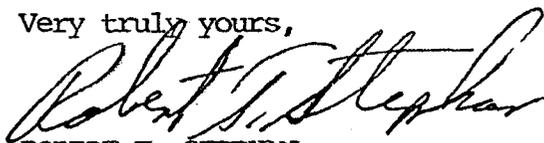
"The supervisors may call upon the county attorney of the county in which a major portion of the district lies, or the attorney general for such legal services as they may require."

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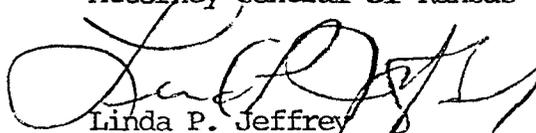
Thus, since the Board of Supervisors has authority to seek legal assistance from the county attorney, where a county counselor is appointed, the responsibility to provide legal assistance to the Conservation District Board of Supervisors devolves upon the county counselor, assuming of course, that the legal assistance requested involves matters of civil law.

Upon the appointment of a county counselor, all duties in civil matters otherwise required by law of the county attorney pass to the county counselor. Therefore, the county counselor is responsible for rendering legal services to conservation districts.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Linda P. Jeffrey  
Assistant Attorney General

RTS:WEH:LPJ:may