



STATE OF KANSAS

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June 18, 1980

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ATTORNEY GENERAL OPINION NO. 80- 138

Mr. Oliver Kent Lynch
Cherokee County Attorney
Cherokee County Courthouse
Columbus, Kansas 66725

Re: Counties and County Officers--Home Rule Powers--
Prescribing Duties of County Officers

Synopsis: Federal revenue sharing program regulations do not designate a particular local officer or officers of recipient governments to be responsible for the keeping of records and the making of reports required by said regulations. Under Kansas law, however, it is the duty of the county treasurer to receive and account for all moneys belonging to the county "from whatsoever source they may be derived." Thus, the recordkeeping duty imposed by said federal regulations to assure that revenue sharing moneys are properly accounted for is, by virtue of Kansas law, vested in the county treasurer.

In the exercise of the local legislative and administrative powers granted to it under the home rule statutes, the board of county commissioners may prescribe and define the duties of officers of county government for the conduct of county business as the board deems most appropriate. Accordingly, the board may, by resolution, prescribe duties and designate an appropriate county officer or officers to attend to the function of the making of use reports to the director of revenue sharing program as required by federal regulations. Cited herein: K.S.A. 1979 Supp. 19-101a, as amended by 1980 House Bill No. 2816 and 1980 House Bill No. 2861, K.S.A. 19-212, Sixth, K.S.A. 1979 Supp. 19-506, K.S.A. 19-507.

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Dear Mr. Lynch:

You have asked for the opinion of this office concerning the power of the Cherokee County Board of County Commissioners to assign duties relating to the county's receipt of federal revenue sharing money to other county officers. You advise that the Cherokee County Treasurer has for some time assumed the responsibility for bookkeeping and reporting requirements established by federal regulations for administration of the revenue sharing program. However, you state that the treasurer has informed the Board that she will no longer perform that function as it is not one of her statutory duties.

Based on the foregoing, you have asked three questions. First, you inquire: upon whom is the responsibility for compliance with bookkeeping and reporting requirements established by federal revenue sharing program regulations imposed? The pertinent federal regulations, 31 C.F.R. §§51.01 et seq., do not answer the question. The regulations simply require each "recipient government" (including county governments) to make interim and annual "use reports" to the director of the revenue sharing program to assure local compliance with federal law. See 31 C.F.R. §§51.10 through 51.12, inclusive. In addition, each "recipient government" is required to

"[m]aintain its fiscal accounts in a manner sufficient to:

"(1) Permit the reports required by the Director to be prepared therefrom, and

"(2) Permit the tracing of entitlement funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of this part [federal regulations]

"The accounting for entitlement funds shall at a minimum employ the same fiscal accounting and internal audit procedures as are used with respect to expenditures from revenues derived from the recipient government's own sources." 31 C.F.R. §51.100.

Significantly, no particular officer or officers are designated by the federal regulations for the keeping of records or the making of reports required by the regulations. The general responsibility is imposed on the "recipient government."

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We are aware of no provision in the Kansas statutes specifically imposing the above-described revenue sharing program responsibilities on any particular officer or officers. It is important to note, however, that K.S.A. 1979 Supp. 19-506 generally establishes the duty of the county treasurer "to receive all moneys belonging to the county, from whatsoever source they may be derived" (Emphasis added.) K.S.A. 19-507 directs the treasurer "to keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose." (Emphasis added.) In our judgment, the above-quoted sections clearly require the county treasurer to receive and account for all revenue sharing fund moneys belonging to the county, and to account for all expenditures of such moneys, since it is the duty of the county treasurer "to receive [and account for] all moneys belonging to the county, from whatsoever source they may be derived." Thus, it appears that the bookkeeping or recordkeeping function imposed by the above-cited federal regulations to assure that revenue sharing moneys are properly accounted for is, by virtue of Kansas law, vested in the county treasurer.

It is clear, however, that the above-quoted provisions of Kansas law do not impose responsibility on the treasurer for the making of the reports required by the federal regulations. Thus, absent any directive in federal regulations or under Kansas law with respect to this function, you inquire whether the Board of County Commissioners may assign such responsibility to one of the several county offices or officeholders, pursuant to K.S.A. 19-212. This statute lists specific powers which may be exercised by the board of county commissioners, including at paragraph Sixth, the power "[t]o represent the county and have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law." (Emphasis added.)

In addition to that specific grant of authority, boards of county commissioners are also vested with broad home rule powers "to transact all county business and perform such powers of local legislation and administration as they deem appropriate," subject to certain enumerated restrictions and prohibitions. Subsection(a) of K.S.A. 1979 Supp. 19-101a, as amended by 1980 House Bill No. 2816 and 1980 House Bill No. 2861. In several opinions of former Attorney General Curt Schneider it was concluded that the home rule authority empowers the board of county commissioners to prescribe and define the duties of officers of county government for the conduct of county business as the board deems most appropriate. For example, in Attorney General Opinion No. 78-39, General Schneider determined that

a board of county commissioners may designate by resolution and prescribe the duties of the county treasurer or other county officer, as it may deem appropriate, for the implementation of a county investment program for the investment of idle county funds. In the exercise of its home rule powers, the Attorney General wrote:

"[T]he board of county commissioners is clearly authorized to designate by resolution the person or persons who shall be responsible therefor, to prescribe their official duties and any bond which is required, and also prescribe the duties of any other officer of county government to provide assistance in the implementation of the county investment program." Attorney General Opinion No. 78-39, pp. 2-3.

In Attorney General Opinion No. 78-53, the Attorney General reached a similar conclusion. He wrote that the home rule statutes empower the board of county commissioners "to define [by resolution] the duties of the sheriff or of any other county officers to provide and furnish services pursuant to an interlocal agreement . . . authorized under K.S.A. 12-2901 et seq." and that such resolution "has the force and effect of law, and is binding upon the sheriff as a legislative prescription of the duties of the office which he is required by virtue of his office to provide." (Emphasis added.)

We concur in the above-mentioned opinions, and it is our judgment that the conclusion reached in those opinions apply with equal force to your question. Thus, it is our opinion that the Board may, by resolution, prescribe duties and designate an appropriate county officer or officers to attend to the function of the making of use reports to the director of the revenue sharing program, as outlined above. The Board is authorized to enact such a resolution in the exercise of the legislative and administrative power granted to it by the legislature under the home rule statutes.

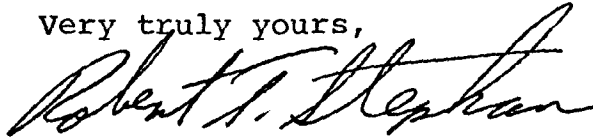
One important caveat should be noted. The foregoing conclusion only pertains to assignment of the duty of making federal revenue sharing use reports to an appropriate county office. If, however, the Board decides that the duty to receive and account for federal revenue sharing funds--which we have concluded falls upon the county treasurer under Kansas law--should be assigned to another county officer, thus in some measure changing the statutory prescriptions of duties, the Board may only do so, in our judgment, in one of two ways. If the statutes sought to be changed are of non-uniform application to counties, a charter resolution could effectuate the desired change. A second alternative the Board may find useful is the governmental organization act, K.S.A. 12-3901 et seq., if

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reorganization or consolidation of certain county functions is deemed expedient.

Lastly, you inquire: "if the County Commissioners can so assign the duties, are they required to pay additional compensation for the work performed?" There is no specific provision in the home rule statutes requiring the payment of additional compensation for the performance of newly-prescribed duties of county officers. However, insofar as the satisfactory performance of such new duties may necessitate the hiring of additional personnel to perform the newly-assigned tasks, the Board should take into account the possible need for additional funding for a particular office or offices.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:WRA:SC:phf

Encl. Attorney General Opinion No. 78-39
Attorney General Opinion No. 78-53

cc: Betty McBride
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