



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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December 28, 1981

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ATTORNEY GENERAL OPINION NO. 81-288

Sam Schmidt
Grant Township Clerk
Rt. 2
Russell, Kansas 67665

Re: Townships and Township Officers--Duties of Township
Clerk--Salary

Townships and Township Officers--Township Board--
Conduct of Meetings

Synopsis: The duties of the township clerk are set forth in Article 5 of Chapter 80, Kansas Statutes Annotated, and include the custody of the records, books and papers of the township and the filing and recording of documents as are required by law. Compensation for the clerk is set by K.S.A. 80-302. Furthermore, the doctrine of incompatibility of offices does not preclude additional compensation arising out of the employment of the clerk for duties (e.g. road maintenance).

The township trustee, clerk and treasurer act together as the township board in performing numerous statutory functions. Meetings of the township board are presided over by the trustee, and must be held in compliance with the Kansas Open Meetings Act, K.S.A. 75-4317 et seq. Cited herein: K.S.A. 68-523, 80-302, 80-501, 80-502, 80-503, 80-504, 80-1204, 80-1303, K.S.A. 1980 Supp. 75-4318, K.S.A. 75-4319, as amended by L. 1980, ch. 344.

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Dear Mr. Schmidt:

As the Clerk for Grant Township in Russell County, Kansas, you request our opinion on several questions which deal with the scope of your duties and the compensation you can receive therefor. Additionally, you inquire concerning the way in which meetings of the township board are to be conducted, i.e., who is to preside, what procedure should be followed, and so forth.

The duties of a township clerk are set forth at K.S.A. 80-501 et seq., and include the following:

K.S.A. 80-501. "The township clerk shall have the custody of the records, books and papers of the township, when no other provision is made by law; and he or she shall file in his or her office all such papers as are by law required to be filed, and promptly record such as are by law required to be recorded therein; and he or she shall discharge such other duties as may be required by law."

K.S.A. 80-502. "He or she shall immediately after receiving the report of the township trustee record the same at length in the township record, and publish the same by posting up a certified copy thereof at the usual place of holding elections in the township."

K.S.A. 80-503. "The records and other books of the township clerk and treasurer shall always be open for public inspection."

K.S.A. 80-504. "Each township clerk shall before entering upon the duties of his or her office execute a bond to the state of Kansas in a sum not less than three hundred dollars, with two or more sureties, the amount and sufficiency of the bond to be approved by the chairman of the board of county commissioners, conditioned for the faithful discharge of his or her duties, which bond shall be by him or her forthwith filed in the office of the county clerk."

Additionally, the township clerk serves as clerk to the township board when it is performing functions given it by law. Among these functions include the approval of claims against the township (K.S.A. 80-302), the issuance of certain licenses (K.S.A. 80-1303), and the performance of municipal functions such as sewage disposal (K.S.A. 80-2001 et seq.), fire protection (K.S.A. 80-1501 et seq.), water supply (80-1601 et seq.) and road maintenance (K.S.A. 68-523).

Generally, the township clerk receives the same rate of compensation as do the other two elected township officials, the trustee and the treasurer. This rate, in effect since 1977, is established by K.S.A. 80-302 as follows:

"The township trustee, clerk and treasurer shall each receive for such officer's services in attending to the township business, not to exceed the sum of twenty-five dollars (\$25) per full day or not to exceed fifteen dollars (\$15) for any day in which less than four (4) hours is spent attending to such business."

While the statutes provide that the trustee may receive additional compensation for other duties provided by law (e.g., eradication of moles, gophers and prairie dogs, K.S.A. 80-1204), there appears to be no statute which provides additional compensation for township clerks. As townships have only such powers and authority as are conferred by statute [Paul v. Topeka Township Sewage Dist. No. 2, 199 Kan. 394 (1967)], no increase in compensation is possible but by the amendment of this statute.

You further inquire whether it is permissible for you to receive compensation as a road maintenance employee of the district. In our opinion, such an arrangement is permissible under Kansas law, and is not barred by the common law doctrine of incompatibility of offices. In that the duties of township clerk are not inconsistent with those of a road maintenance employee, the two positions are not incompatible, and the holding of one does not preclude the holding of the other. See, e.g., Abry v. Gray, 58 Kan. 148 (1897), Dyche v. Davis, 92 Kan. 971 (1914), 67 C.J.S. Officers §27 (1978). Furthermore, as noted in a prior opinion of this office, No. 79-242, the Legislature has recognized that in certain cases it may be necessary and appropriate to employ township board members to effect the construction, repair or maintenance of township roads.

Your second set of inquiries concerns the functioning of the township board, which is the governing authority for the township as to those matters which have been delegated it by statute.

(Examples of these powers were mentioned above.) Although the statutes are rather meager as to the manner in which meetings of the board are to be conducted, there is case law to the effect that the trustee is the "managing officer" of the township. Fisher v. Odell Township, 87 Kan. 687, 691 (1912). Although the situation is essentially one where the trustee is first among equals, insofar as some one person needs to conduct the board's meetings, in our opinion it should be the trustee. Again, while the statutes are silent, we would expect the same procedure to be followed at board meetings as at other municipal bodies, i.e., actions must be moved and seconded, a majority vote is needed for passage, a quorum is needed to act on business, etc. 4 McQuillin, Municipal Corporations, §13.42 (1979).

Furthermore, as the township is a political and taxing subdivision of the state, meetings of the board must comply with the Kansas Open Meetings Law, K.S.A. 75-4317 et seq. and amendments thereto. Specifically, the meetings must be open to the public, no binding action may be taken by secret ballot or in executive (i.e., closed) session, and only certain limited subjects may be discussed in such closed sessions. As set out by K.S.A. 75-4319(b), these subjects include:

- "(1) Personnel matters of nonelected personnel;
- "(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
- "(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;
- "(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- "(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person; and
- "(6) preliminary discussions relating to the acquisition of real property."

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In addition, if any person requests it, notice of the date, time and place of any regular or special meeting of the board must be provided. K.S.A. 1980 Supp. 75-4318(b). Likewise, if an agenda is prepared relating to the business to be transacted, it must be made available upon request. K.S.A. 1980 Supp. 75-4318(c).

In conclusion, the duties of the township clerk are set forth in Article 5 of Chapter 80, Kansas Statutes Annotated, and include the custody of the records, books and papers of the township and the filing and recording of documents as are required by law. Compensation for the clerk is set by K.S.A. 80-302. Futhermore, the doctrine of incompatibility of offices does not preclude additional compensation arising out of the employment of the clerk for other duties (e.g., road maintenance). The township trustee, clerk and treasurer act together as the township board in performing numerous statutory functions. Meetings of the township board are presided over by the trustee, and must be held in compliance with the Kansas Open Meetings Act, K.S.A. 75-4317 et seq.

Very truly yours,

ROBERT T. STEPHAN
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Jeffrey S. Southard
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RTS:BJS:JSS:jm