



STATE OF KANSAS

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April 1, 1982

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ROBERT T. STEPHAN
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION NO. 82-76

Honorable Kenneth W. Green
Representative, Seventy-Fifth District
Room 157 East, State Capitol
Topeka, Kansas

Re: Automobiles and Other Vehicles--Registration of
 Vehicles--Collection and Use of Registration Fees

Synopsis: The county treasurer has control over the means by which the duties imposed under the state motor vehicle registration laws are to be fulfilled. Thus, the county treasurer, and not the board of county commissioners, has the authority to fix the salaries of the necessary help needed to fulfill those duties. However, the county has no responsibility or authority to give financial assistance to the county treasurer in regard to the administration of the state motor vehicle registration laws. The financial resources available to the county treasurer to administer these laws are confined, by K.S.A. 1981 Supp. 8-145, to the amount deposited in the special fund provided for in that statute. (Attorney General Opinion No. 77-39 is withdrawn.) Cited herein: K.S.A. 1981 Supp. 8-145.

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Dear Representative Green:

On behalf of the Butler County Treasurer, you seek an opinion in regard to the provisions of K.S.A. 1981 Supp. 8-145. Specifically, you pose the following questions:

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"Does the treasurer have complete control to set the salaries of the necessary help needed to perform the duties required under the statutes pertaining to the motor vehicle registration?"

"Should the fees received for the operation of that office by the county treasurer be insufficient to meet all the salaries including the salary of the county treasurer and incidentals, would the county general fund be required to supplement the difference?"

"To what extent does the Board of County Commissioners have control over the operations of that department?"

K.S.A. 1981 Supp. 8-145 specifies that all registration and certificate of title fees shall be paid to the county treasurer and that

"[t]he county treasurer shall deposit seventy-five cents (75¢) of each license application, seventy-five cents (75¢) out of each application for transfer of license number plates and . . . two dollars (\$2) out of each application for a certificate of title, collected by such treasurer under this act, in a special fund, which fund is hereby appropriated for the use of the county treasurer in paying for necessary help and expenses incidental to the administration of duties in accordance with the provisions of this law and extra compensation to the county treasurer for the services performed in administering the provisions of this act" (Emphasis added.)

The statute also provides that the extra compensation to be paid the county treasurer "shall be in addition to any other compensation provided by any other law." A method for computing the extra compensation, and a maximum amount thereof, are prescribed in the statute.

The law then provides:

"The total amount of compensation paid said treasurer together with the amounts expended in paying for other necessary help and expenses incidental to the administration of the duties

of the county treasurer in accordance with the provisions of this act, shall not exceed the amount deposited in such special fund. Any balance remaining in such fund at the close of any calendar year shall be withdrawn and credited to the general fund of the said county." (Emphasis added.)

Section 8-145 is a part of the statutes relating to the registration of motor vehicles. The section originally was enacted shortly after the turn of this century. It has been amended a number of times since its original enactment, but, since 1937, the section has required that the county treasurer deposit certain prescribed amounts of the fees collected in a special fund, which fund is appropriated, by the legislature, for the use of the county treasurer in paying for "necessary help and expenses incidental to the administration of the duties" required under the motor vehicle registration laws. See Wyandotte County Comm'rs v. Ferguson, 159 Kan. 80, 85-86 (1944).

There has long existed confusion over the powers and responsibilities of the county treasurer and those of the board of county commissioners in light of the provisions of this section. The confusion was dissipated somewhat by Wyandotte County Comm'rs v. Ferguson, supra, where the Court said: "It is . . . perfectly clear . . . that the county treasurers are used by the state for state purposes . . . [and] that the treasurer and not the board [of county commissioners] is charged with administrative responsibilities under the act." 159 Kan. at 85. The Court also concluded that the money in the special fund did not constitute part of the county general fund and the county treasurer was free to expend moneys from this fund without interference by the board of county commissioners.

Given these statements of the Court, we are of the opinion that, subject to the direction of the legislature and the constraints of the financial resources available, the county treasurer has the exclusive authority to establish the salaries to be paid from the special fund created under the provisions of K.S.A. 1981 Supp. 8-145 to those persons who provide the "necessary help" incidental to the administration of the state motor vehicle registration laws.

However, under the express direction of the legislature in K.S.A. 1981 Supp. 8-145, the total amount expended for such necessary help, together with the expenses of the treasurer incidental to the administration of those laws and the extra compensation paid the treasurer, cannot "exceed the amount deposited" in the special fund provided for in the statute. In this regard, it must be noted

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that no provision is made in the statute for supplementation of the amount deposited in the special fund. Thus, we are constrained to conclude that no moneys in the county general fund may be used to augment the special fund created by K.S.A. 1981 Supp. 8-145. It appears the legislature has limited the funds available to the county treasurer in administering the state motor vehicle registration laws to that deposited in the special fund. If that amount is insufficient, we believe the request for additional funds should be made to the legislature, not to the board of county commissioners.

In reaching the foregoing conclusion, we have not overlooked Attorney General Opinion No. 77-39, in which an opposite conclusion was reached. In that opinion, however, neither the Ferguson decision, nor the last-quoted provisions of K.S.A. 1981 Supp. 8-145, were mentioned, although both were in existence at the time the opinion was issued. We believe that failure to consider these provisions produced an erroneous conclusion. Therefore, Attorney General Opinion No. 77-39 is hereby withdrawn.

Finally, in regard to your inquiry concerning the degree of control the board of county commissioners has over the operations of the county treasurer's motor vehicle registration department, we can only reiterate the Court's statement in Ferguson, supra, that it is the county treasurer and not the board of county commissioners who is charged with administrative responsibilities under the state motor vehicle registration laws. Given this statement, we must conclude that no authority is vested in the board, under this statute, to "control" the operations of the county treasurer in fulfilling the duties imposed under the state motor vehicle registration laws.

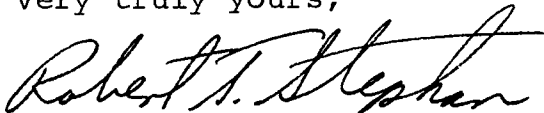
However, this conclusion is limited to the operations of the county treasurer in fulfilling those specific duties. We are not suggesting that the board of county commissioners, in prescribing the annual county budget, lacks the authority to prescribe the total amount of moneys from the county general fund which shall be available to the county treasurer in the next ensuing fiscal year. Clearly, the Board has this authority. K.S.A. 19-235, 19-241, 28-167, 28-824, 79-1802, and 79-2925 et seq. Therefore, while the board of county commissioners is not charged with administrative responsibilities under the state motor vehicle registration laws, and thus lacks the authority to prescribe limits upon expenditures made by the county treasurer from the special fund created under 8-145, the board of county commissioners does retain the right and the responsibility to establish, through the adoption of the county budget, the total amount of county

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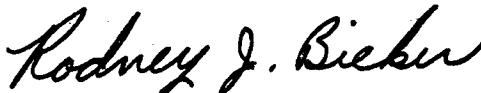
general fund moneys that are available to the county treasurer in performing those duties of the treasurer, other than those imposed under the state motor vehicle registration laws. To this extent, the board of county commissioners does have "control" over the office of the county treasurer.

In summary, it is our opinion that the county treasurer has control over the means by which the duties imposed under the state motor vehicle registration laws are to be fulfilled. Thus, the county treasurer, and not the board of county commissioners, has the authority to fix the salaries of the necessary help needed to fulfill those duties. However, the county has no responsibility or authority to give financial assistance to the county treasurer in regard to the administration of the state motor vehicle registration laws. The financial resources available to the county treasurer to administer these laws are confined, by the provision of K.S.A. 1981 Supp. 8-145, to the amount deposited in the special fund provided for in that statute.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
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