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ATTORNEY GENERAL OPINION NO. 82- 124

The Honorable Robert L. Gernon
Associate District Judge
P. O. Box 417
Hiawatha, Kansas 66434

Re: Counties and County Officers -- Clerk of District
Court -- Board of Trustees of County Law Library

Synopsis: Associate district judges are not members of the
board of trustees of the county law library estab-
lished by K.S.A. 19-1320. The only judges who are
members of such board are district judges. Cited
herein: K.S.A. 19-1320, 20-301a, 20-302, Kan.
Const., Art. 3, §6.

* * *

Dear Judge Gernon:

You have inquired whether an associate district judge is a
member of the board of trustees of the law library established
pursuant to K.S.A. 19-1320. That statute provides, in per-
tinent part, as follows:

"All fees collected pursuant to K.S.A. 19-1319
shall be used to establish and maintain the
county law library. A board of trustees con-
sisting of the district judge or district
judges of the district court and not less than
two (2) attorneys who shall be elected for two
(2) year terms by a majority of the attorneys
residing in the county shall have the manage-
ment and control of such library" (Em-
phasis added.)

From the foregoing, it is clear that the resolution of your
inquiry depends on whether the emphasized language in the
above-quoted provisions can be construed to include an asso-
ciate district judge. Our conclusion must be predicated on
the legislative intent underlying these provisions. As

noted in Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357 (1978):

"The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. Easom v. Farmers Insurance Co., 221 Kan. 415, Syl. 2, 560 P.2d 117 (1977); Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1073 (1978); Brinkmeyer v. City of Wichita, 223 Kan. 393, 573 P.2d 1044 (1978)." 224 Kan. at 367.

It also is well-established that legislative intent must be determined with reference to the situation and existing conditions at the time of a statute's enactment [State, ex rel., v. Murphy, 183 Kan. 698, 702 (1958)], and it is essential to consider statutes in existence at the time of such enactment. Motor Equipment Co. v. Winters, 146 Kan. 127 (1937). Having considered the above-quoted provisions of K.S.A. 19-1320 with these principles in mind, we have concluded that the legislature did not intend the phrase "district judge or district judges of the district court" to include an associate district judge.

Initially, we note that there are currently three classes of district court judges, which are established by K.S.A. 20-301a, as follows:

"There shall be three classes of judges of the district courts established pursuant to K.S.A. 20-301: District judges, associate district judges and district magistrate judges; and as used in this act, the term 'judge of the district court' shall mean any of such judges. Such judges shall have the jurisdiction, powers and duties prescribed by this act and otherwise prescribed by law. The judicial power and authority of a judge of the district court in each judicial district may be exercised anywhere within such judicial district, and may be exercised anywhere within any other judicial district when assigned to hear any proceeding or try any cause in such judicial district, as provided in K.S.A. 20-319."
(Emphasis added.)

We believe that a consideration of K.S.A. 19-1320 and 20-301a as statutes in pari materia [Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973)], together with a review of

the historical background and changes made in the pertinent statutes (Id.), compels the conclusion that the questioned language in K.S.A. 19-1320 was intended by the legislature to include but one of the three classes of judges, i.e., district judges.

Of significance is the fact that the language of K.S.A. 19-1320 in question plainly refers to "district judges," and we believe it is incumbent upon us to construe this statute so as to give effect to the legislature's intent, as expressed by the language of the statute, rather than search for some other legislative purpose or extend the meaning beyond the plain terms of the statute. City of Kiowa v. Central Telephone & Utilities Corporation, 213 Kan. 169, 176 (1973). Our conclusion as to the meaning of the questioned language of K.S.A. 19-1320 is buttressed by a review of legislative changes made in this and other statutes.

When K.S.A. 19-1320 was first enacted in 1967 (L. 1967, ch. 137, §2), the pertinent provisions of this statute read as follows:

"A board of trustees consisting of the judge or judges of the district court as ex officio member or members and not less than two attorneys who shall be elected for two (2) year terms by a majority of the persons registered shall have the management and control of such library" (Emphasis added.)

It is to be observed that the emphasized portion of the foregoing necessarily refers to the judge of the district court now referred to in K.S.A. 20-301a as "district judge." That was the only class of district court judge in existence in 1967. The offices of associate district judge and district magistrate judge were not created until 1976. (See L. 1976, ch. 146, §§10,11,12,13.) As a consequence, the legislature's use of the term "judge of the district court" in 1967 was a reference to the only judge who could exercise the judicial power and authority of a district court. Such power and authority was set forth in the then existing provisions of K.S.A. 20-302, which stated:

"The judges of the district courts shall have and exercise such power in vacation or at chambers as may be provided by law, and shall also have power in vacation to hear and determine motions to vacate and modify injunctions, discharge attachments, vacate orders of arrest, and to grant or vacate all necessary interlocutory orders, and to punish for contempt in

open court or at chambers, by fine, not to exceed one hundred dollars (\$100), and imprisonment, or either, and to assign not exceeding one attorney to prisoners who may be unable to employ counsel." (Emphasis added.)

In the same 1976 act which enacted K.S.A. 20-301a, the foregoing provisions were amended to read as follows:

"The district judge provided for in the Kansas constitution shall have and exercise the full judicial power and authority of a district court." (Emphasis added.)

The judge of the district court provided for in Article 3, Section 6 of the Kansas Constitution is styled as a "district judge." By virtue of K.S.A. 20-302, a district judge is entitled to "exercise the full judicial power and authority of a district court." Thus, the legislative history of K.S.A. 20-302 confirms the fact that the judge referenced in the original version of K.S.A. 19-1320 is now styled as "district judge," which is only one of the three classes of judges established by K.S.A. 20-301a.

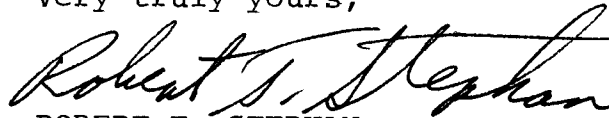
As previously noted, the original version of K.S.A. 19-1320 provided that the county law library's board of trustees would include the "judge or judges of the district court." Arguably, therefore, such phraseology would include an associate district judge, since K.S.A. 20-301a defines "judge of the district court" to include all three classes of district court judges. However, K.S.A. 19-1320 was amended in 1976 (L. 1976, ch. 151, §1), the same session of the legislature in which the additional classes of judges were established, to provide that membership on the county law library's board of trustees would include the "district judge or district judges of the district court." (Emphasis added.) The addition of the word "district" preceding each occurrence of "judge" was the only amendment made in this statute by that act. Therefore, assuming arguendo that, if the original version of K.S.A. 19-1320 had remained in effect, it would include an associate district judge on the county law library's board of trustees, it is to be presumed that, when this statute was amended, the legislature intended to change the meaning of the questioned language. "'[A]ny changes and additions made in existing legislation raise a presumption that a change in meaning and effect is intended.'" Shapiro v. Kansas Public Employees Retirement System, 211 Kan. 452, 456 (1973), quoting Curless v. Board of County Commissioners, 197 Kan. 580 (1966). Accordingly, we believe the 1976 amendment of K.S.A. 19-1320 clarified the legislature's intention that only district judges are to be members of the county law library's board of trustees.

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District judges are a class of judges separate and distinct from associate district judges and district magistrate judges.

Therefore, in light of the legislative histories of the various statutes discussed herein, as well as the plain and unambiguous reference in K.S.A. 19-1320 to district judges, it is our opinion that associate district judges are not members of the board of trustees of the county law library established by K.S.A. 19-1320. The only judges who are members of such board are district judges.

Very truly yours,



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