



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

June 22, 1982

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 82- 135

Glenis L. Heldenbrand  
Reno County Clerk  
206 West First Street  
Hutchinson, Kansas 67501

Re: Counties and County Officers -- County Clerk --  
Consolidation of Statutory Duties With Another  
Office

Synopsis: The duties of county clerks are prescribed by  
statutes uniformly applicable to all counties and  
may be altered by a board of county commissioners  
only according to the procedure set out in K.S.A.  
12-3901 et seq. Cited herein: K.S.A. 12-3901,  
19-212, 19-229, 19-301, 19-305, 19-306, 19-311,  
19-312, 19-313.

\*

\*

\*

Dear Ms. Heldenbrand:

You have requested an opinion from this office regarding  
whether the Board of County Commissioners of Reno County has  
the authority to enact a resolution transferring the county  
payroll accounting function and responsibility from the  
county clerk to a proposed county department of administra-  
tion.

As a preliminary matter it should be noted that the board of  
county commissioners is authorized to exercise control over  
the county's financial affairs and property. These general  
powers are set forth in K.S.A. 19-212, which provides in part:

"Second. To examine and settle all accounts  
of the receipts and expenses of the county,  
and to examine and settle and allow all ac-  
counts chargeable against the county; and

when so settled, they may issue county orders therefor, as provided by law.

. . . . .

"Sixth. To 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."

Also, K.S.A. 19-229 provides in part that "the boards of county commissioners shall have exclusive control of all expenditures accruing." When K.S.A. 19-229 is read in conjunction with the general powers conferred in K.S.A. 19-212, one may conclude that there is little outside the scope of county commissioners' powers regarding financial matters of the county. See, also, Hackler v. Board of County Commissioners, 189 Kan. 697 (1962). However, these broad powers must be considered in relation to the statutorily conferred responsibilities and powers of the county clerk.

K.S.A. 19-305 states in pertinent part:

"It shall be the general duty of the county clerk: . . . fourth, [to] sign all orders issued by the board for the payment of money; fifth, to preserve and file all accounts acted upon by the board, with their action thereon . . . ."

K.S.A. 19-306 provides in pertinent part:

"It shall be the duty of such clerk to designate, upon every account which shall be audited and allowed by the board, the amount so allowed . . . ."

K.S.A. 19-311 provides:

"The county clerk of each county of this state shall keep a book in which he shall keep the receipts and expenditures of his county, and all accounts of his county with the different county, township, district, and other officers."

K.S.A. 19-312 specifies the accounts which the county clerk must maintain with the county treasurer and includes, inter alia, "the amount of county orders received by the county treasurer and returned to the county board and canceled."

Glenis L. Heldenbrand  
Page Three

K.S.A. 19-313 states:

"The county clerk, in making the above charges, credits, and entries [in the accounts with the county treasurer] shall state each fund and each item of each different fund separately."

The statutory scheme outlined above does not specifically utilize the term "payroll"; however, the county clerk's office has been characterized as

"the general bookkeeping office of the county. The county clerk keeps accounts of receipts and expenditures of the county, and keeps accounts of the county with its various officers." Cherokee County Comm'rs. v. United States F. & G. Co., 141 Kan. 301 at 303 (1933). [See, also, Amrine v. Kansas Pac. R. Co. 7 Kan. 115 (1871) and Heim, Guidebook to Kansas Local Governments, 1979, p. 62.]

The general authority conferred on county clerks by K.S.A. 19-301 et seq. and the above-cited authorities lead to the conclusion that the legislature intended the county payroll function and responsibility to be the province of the county clerk. However, the question remains as to whether the board of county commissioners may alter the above-stated statutory duties of the county clerk.

K.S.A. 12-3901 et seq. (Governmental Organization Act) provide a statutory process by which political and taxing subdivisions may, inter alia, consolidate governmental offices and functions when such consolidation would serve to "more efficiently and effectively serve the needs of their constituents."

K.S.A. 12-3903 states in pertinent part as follows:

"Whenever the governing body of any political or taxing subdivision of this state shall by resolution determine that duplication exists in the operations, procedures or function of any of the offices or agencies of such subdivision or that the operations, procedures or functions of any of the offices or agencies thereof can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single office or agency, . . . such governing body or governing bodies are hereby authorized to consolidate any or all of the operations, procedures

Glenis L. Heldenbrand  
Page Four

or functions performed or carried on by such offices or agencies by the passage of a resolution . . . setting out the time, form and manner of consolidation and designating the surviving office or agency."

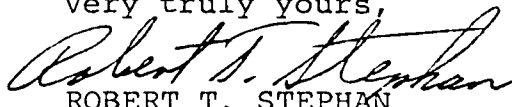
K.S.A. 12-3903 imposes two conditions precedent to the consolidation of the operations, procedures or functions of governmental offices or agencies. First, there must be two or more offices or agencies with operations, procedures or functions that are susceptible of consolidation. Second, the governing body (in this instance the board of county commissioners) must find that such operations, procedures or functions "can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single office or agency." While the statute is silent regarding the actual process to be utilized in making such finding, it is clear that it requires a factual determination. Thus, in this instance, we assume that the board of county commissioners would consider all relevant factors tending toward a conclusion as to the efficiency and effectiveness of the proposed consolidation. And in obtaining factual data upon which to base its decision, it is likely the board will solicit your views and the views of all interested parties relating to the proposed consolidation of functions.

Before concluding, it should be noted that the Governmental Organization Act does not allow any political or taxing subdivision to relieve itself of any responsibility imposed by law. K.S.A. 12-3905 states

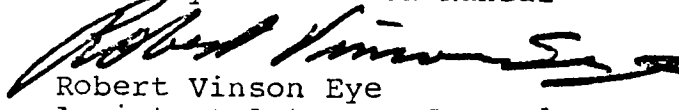
"No consolidation proceeding or agreement made pursuant to this act shall relieve any political or taxing subdivision of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility."

In summary, the duties of county clerks are prescribed by statutes uniformly applicable to all counties and may be altered by a board of county commissioners only according to the procedure set out in K.S.A. 12-3901 et seq.

Very truly yours,

  
ROBERT T. STEPHAN

Attorney General of Kansas

  
Robert Vinson Eye  
Assistant Attorney General