ATTORNEY GENERAL OPINION NO. 83-65

Richard G. Oliver
Wilson County Attorney
Room 201
Wilson County Courthouse
Fredonia, Kansas 66736

Re: Counties and County Officers -- County Attorney -- Authority to Appoint Assistants

Synopsis: A county attorney has inherent power, within budget limitations, to appoint such assistant county attorneys as he or she deems necessary to properly expedite the business of his or her office. Cited herein: K.S.A. 19-702, 19-703, 19-704, 19-706b, 19-713, 19-716, 19-724, 28-167.

Dear Mr. Oliver:

You have requested the opinion of this office regarding whether a county attorney has the authority to appoint an assistant county attorney to assist in the performance of official duties related to the office of county attorney. We note that you have appointed an individual to the position of assistant county attorney. You advise that, at present, no county moneys are utilized to compensate the assistant county attorney.

We find no specific statutory authority which explicitly authorizes a county attorney to appoint an assistant county attorney. However, we have no difficulty in concluding as a matter of law that the county attorney has the inherent power to appoint such assistants as he or she deems necessary to carry out the duties of the subject office so long as no applicable budget limits are exceeded. "Where there is no specific statutory authority enabling a prosecutor to appoint needed assistants, it has been indicated that he has such
power by virtue of his office." 63 Am.Jur.2d Prosecuting
Attorneys §8, (1972), citing Murphy v. Board of Chosen
Freeholders of Bergen County, 163 A. 555 (N.J. 1932). We
believe this inherent authority to appoint arises by virtue
of the nature of the county attorney's official duties spe-
cified at K.S.A. 19-702, 19-703, 19-704, 19-713, 19-716 and
19-724.

Furthermore, we direct attention to K.S.A. 28-167 which states:

"When in any county having a population of
not more than one hundred thousand (100,000)
it is necessary, the board of county commis-
sioners shall allow such reasonable sums for
assistants, deputies, clerical and stenographic
hire as may be necessary to properly expedite
the business of the offices of the county attor-
ney, county clerk, county treasurer, register
of deeds and sheriff."

Pursuant to this statute the role of the county commission
is to appropriate "reasonable" sums for the administration
of the specified county offices. Such power does not autho-
itize the commission to restrict the appointment of assistants
but only to control the appropriation of public funds. See
also K.S.A. 19-706b.

In conclusion, it is our opinion that a county attorney has
inherent power, within budget limitations, to appoint such
assistant county attorneys as he or she deems necessary to
properly expedite the business of his or her office.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Robert Vinson Eye
Assistant Attorney General