



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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April 29, 1983

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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.

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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

Richard G. Oliver  
Page Two

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 specified at K.S.A. 19-702, 19-703, 19-704, 19-713, 19-716 and 19-724.

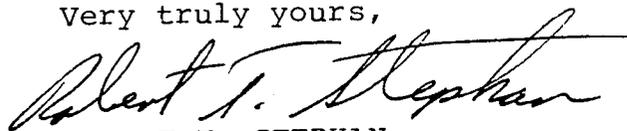
Furthermore, we direct attention to K.S.A. 28-167 which states:

"When in any county having a population of not more than one hundred thousand (100,000) it is necessary, the board of county commissioners 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 attorney, 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 authorize 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

RTS:BJS:RVE:hle