



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 149

The Honorable Mike Meacham
State Representative, Eighty-Third District
1722 Gatewood
Wichita, Kansas 67206

Re: Counties and County Officers -- County Clerks --
Records and Accounts

Synopsis: The duties of the county clerk are statutorily prescribed and require access to such records and accounting information as is necessary in order to carry out such duties. Cited herein: K.S.A. 10-801, 10-1101, 10-1117, 12-105a, 19-305, 19-306, 19-311, 19-318, 19-507, 19-6a02, 19-6a03.

* * *

Dear Representative Meacham:

You request our opinion concerning the duties and responsibilities of the Sedgwick County Clerk. In particular, you inquire whether the clerk, in order to perform her statutory functions, must be provided access into the county's central accounting records and computer system through the use of a terminal outlet.

Upon receiving your request, we requested a statement of facts and relevant law from the Sedgwick County Counselor. Regrettably, counsel's efforts proved inadequate regarding the records or information contained in the computer system and which records or information are being denied the county clerk. It is now clear that the questions of law in this situation are relatively simple and few, while the questions of fact are complex and numerous. As you know, this office cannot be a trier of factual questions and resolve disputes arising from circumstances such as this, where a thorough understanding of accounting and recording practices of the

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county is absolutely necessary. Such factual questions may best be resolved by negotiation or court action. We are, of course, pleased to consider and discuss the relevant legal issues raised by your request.

Generally, the county clerk's duties are statutorily prescribed at K.S.A. 19-301 et seq. These statutes state, in relevant part, that the county clerk shall "sign all orders issued by the board [of county commissioners] for the payment of money," (K.S.A. 19-305, fourth) and "preserve and file all accounts acted upon by the board, with their action thereon," (K.S.A. 19-305, fifth). Additionally, it is the duty of the clerk "to designate, upon every account . . . the amount so allowed . . ." (K.S.A. 19-306), to "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. 19-311), and "to draw orders on the county treasurer . . . for any money that may have been collected," (K.S.A. 19-318). For a discussion of the county clerk's duties, see Kansas Attorney General Opinion No. 82-135. Furthermore, the county clerk has other statutorily prescribed duties contained in the Cash Basis Law, K.S.A. 10-1101 et seq., the Uniform Procedure for Payment of Claims Act, K.S.A. 12-105a et seq., and K.S.A. 10-801 et seq.

The above statutes clearly enumerate the duties of the county clerk, irrespective of any of the duties of the county controller. However, the Sedgwick County Counselor suggests that duties of the office of county controller acting pursuant to K.S.A. 19-6a02 and 19-6a03, are duplicitous of certain duties enjoined upon the county clerk and argues that this statute implicitly repeals the authority of the county clerk over such matters. While there may indeed be some duplication, the laws of this state have long required dual record-keeping in regard to the financial transactions of counties. See K.S.A. 19-311 and 19-507, concerning the keeping of financial records by the county clerk and county treasurer, respectively, both of which laws were enacted originally in 1868.

In addition, the legislature, in amending K.S.A. 10-1117 in 1974, did not change the requirements that the clerk or secretary of each municipality keep detailed records of the municipality's financial transactions or that "[s]uch clerk or secretary shall, upon the request of any person, exhibit such records to such person and any person contracting with the municipality shall be chargeable with knowledge of what such records contain." Thus, any person desiring to review financial records of any municipality, including a county, has the right to do so by reviewing the records of the clerk or secretary. The legislature did not mention records maintained by a county controller.

We discern nothing in the provisions of K.S.A. 19-6a03 or in the sparse record concerning the enactment of this statute in 1973 which indicates the legislature intended that a non-elected county controller was to assume the functions of an elected county clerk and thereby relieve the county clerk of duties enjoined upon him or her by state law.

Based upon the above-cited statutory provisions, some of which were enacted after the statutes concerning a county controller were adopted, we cannot attribute to the legislature the intent to relieve a county clerk of duties enjoined upon the clerk by state law, even though the county has appointed a county controller.

Finally, we return to the issue of whether the county must provide the county clerk access to the county computer system. There is no statute requiring such access, however, it cannot be seriously disputed that no county officer or employee can substantially interfere in the performance of statutory duties imposed upon the county clerk. It is a general rule of law that "[a] public official should not be interfered with in the performance of his official duties." 67 C.J.S. Officers §205 (1978). Denial of relevant bookkeeping data or records necessary to accomplish tasks assigned by law would be, in our opinion, an unlawful interference with the performance of the county clerk's duties. In the case of the county controller, this duty to provide the information necessary for the county clerk to fulfill statutory responsibilities is also implied in K.S.A. 19-6a03. That statute requires the controller "[t]o initiate and enforce measures and procedures in cooperation with other officers and department heads" regarding efficiency in county government and "[t]o report to other governmental agencies when and as required by law or the board of county commissioners."

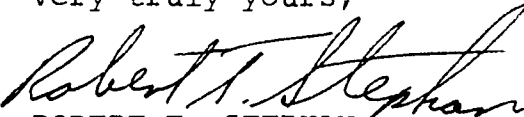
Whether the legally required information is provided to the county clerk via computer access or by way of traditional paperwork has, in our judgment, little significance so long as the information is available for the clerk to perform statutory duties.

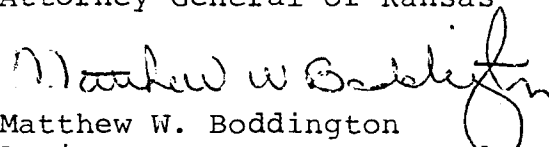
The remaining practical and factual problem, which, as previously noted, is beyond the scope of an Attorney General's opinion, is just which information is necessary to the performance of statutory duties and how that information can best be provided. Resolution of such problems are of purely local interest and importance and may best be solved by local administrative officers.

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Therefore, it is our opinion that duties of the county clerk are statutorily prescribed and require access to such records and accounting information as is necessary in order to carry out such duties.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Matthew W. Boddington
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RTS:BJS:MWB:hle