



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

June 29, 1984

ATTORNEY GENERAL OPINION NO. 84- 64

Keith R. Henry, Esq.
Weary, Davis, Henry, Struebing & Troup
819 North Washington Street
Junction City, Kansas 66441

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

Synopsis: District magistrate judges are not members of the board of trustees of a county law library established pursuant to K.S.A. 19-1315. The only judges who are members of such board are district judges. Cited herein: K.S.A. 19-1314, 19-1315, 19-1320, 20-301a.

* * *

Dear Mr. Henry:

As Chairman of the Board of Trustees of the Geary County Law Library, you have request our opinion regarding the membership of a county law library board of trustees. The county law library in question was established pursuant to K.S.A. 19-1314 et seq., with K.S.A. 19-1315 providing for the composition of the board of trustees of such a library as follows:

"After the members of the bar of any such county shall have elected to come within the provisions of this act, the judge or judges of the district court ex officio, and three (3) members of the bar of such county to be elected . . . by the members of the bar . . . shall be the trustees of a law library that may be acquired, established and maintained in such county under the provisions

of this act and shall have the supervision, management and control thereof." (Emphasis added)

You ask whether the emphasized language above refers to district magistrate judges who are not attorneys but who are included in the definition of "judges of the district court" found in K.S.A. 20-301a, which provides:

"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.)

Attorney General Opinion No. 82-124 addressed a very similar question. That opinion concerned the membership of a board of trustees of a county law library established pursuant to K.S.A. 19-1320, which provides that the board of trustees of such a library shall be composed of the "district judge or district judges of the district court and not less than two attorneys" The opinion addressed the question of whether that language included associate district judges in view of the definition of "judges of the district court" found in K.S.A. 20-301a. Based upon the legislative history, principles of statutory construction and the specific language of K.S.A. 19-1320, Opinion No. 82-124 concluded:

"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."

A point of major significance to that opinion is the fact that the language of K.S.A. 19-1320 (unlike the general reference to "judges of the district court" found in K.S.A. 19-1315) makes specific reference only to "district judges." The opinion discusses the history of K.S.A. 19-1320 and points out that when the statute was first enacted in 1967, the pertinent language provided "a board of trustees consisting of the judge or judges of the dis-

district court as ex officio member or members" This is essentially the same language which has been contained in K.S.A. 19-1315 since its enactment in 1957. (See L. 1957, ch. 194.) At the time both statutes were enacted the only class of district court judge in existence was the judge now referred to in K.S.A. 20-301a as "district judge." The offices of associate district judge and district magistrate judge were not created until 1976. (See L. 1976, ch. 146, §§10, 11, 12, 13.)

Attorney General Opinion No. 82-124 discussed the interpretation of K.S.A. 19-1320 in language which is, in our opinion, equally applicable to the interpretation of K.S.A. 19-1315.

"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.)

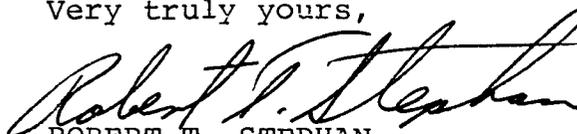
"The judge of the district court provided for in Article 3, Section 6 of the Kansas Constitution is styled as a 'district judge.' By virtue of K.S.A. 20-302, a district judge is entitled to 'exercise the full judicial power and authority of a district court.' Thus, the legislative history of K.S.A. 20-302 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."

Opinion No. 82-124 also relied upon the fact that in 1976 (the same year that the offices of an associate district judge and district magistrate judge were created), K.S.A. 19-1320 was amended to provide that the district judge or judges would be members of the law library board of trustees. In the case of K.S.A. 19-1315, the language "judge or judges of the district court" remains unchanged. Therefore, it can be argued that under K.S.A. 19-1315 a law library's board of trustees should include associate district judges and magistrate judges of the district, especially in light of K.S.A. 20-301a. We note, however, that the definitions found therein are limited to the terms of that enactment. It is our opinion that the failure of the legislature to amend K.S.A. 19-1315 in 1976 does not outweigh other indicators of legislative intent which point to the conclusion that the statute was originally intended to refer only to district court judges.

Certain rules of statutory construction compel this interpretation of the statute. The first and most important rule of construction is of course that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. See Southeast Kansas Landowners Ass'n v. Kansas Turnpike Authority, 224 Kan. 237 (1978); Eason v. Farmers Insurance Co., 221 Kan. 415, Syl. 2 (1977). It also is well established that legislative intent must be determined with reference to the situation and conditions existing at the time of a statute's enactment [State, ex rel. v. Murphy, 183 Kan. 698, 702 (1958)], and it is essential to consider those statutes in existence at the time of such enactment. Motor Equipment Co. v. Winters, 146 Kan. 127 (1937). Considering such provisions here, and construing K.S.A. 19-1315 in light of them, we are compelled to conclude that the legislature did not intend the phrase "judge or judges of the district court" to include a district magistrate judge.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary F. Carson
Assistant Attorney General