



STATE OF KANSAS

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November 6, 1985

ATTORNEY GENERAL OPINION NO. 85- 147

Thomas R. Oglevie
114 West 12th Street
P.O. Box 149
Goodland, Kansas 67735

Re: Counties and County Officers -- General Provisions
-- Transaction of County Business

Synopsis: A board of county commissioners may reduce the salary of the county attorney under the broad home rule powers granted such board by K.S.A. 1984 Supp. 19-101a, as amended by L. 1985, ch. 208, §1, provided the publication, notice and hearing requirements of K.S.A. 79-2929a are followed in amending the current budget. Cited herein: K.S.A. 1984 Supp. 19-101a, as amended by L. 1985, ch. 208, §1; K.S.A. 1984 Supp. 19-247; K.S.A. 79-2929a; L. 1974, chs. 110, 361.

* * *

Dear Mr. Oglevie:

As special counsel for the Board of County Commissioners of Sherman County, you inquire regarding the authority of the county commissioners to reduce the salary of the county attorney following the establishment of the position of county counselor pursuant to K.S.A. 1984 Supp. 19-247. You state that the creation of a county counselor position in Sherman County would in effect reduce the county attorney's salary from \$22,200 per year (which heretofore has been for the performance of both civil and criminal duties) to \$12,000 per year, which will represent solely compensation for the handling of criminal law matters.

The issue of whether or not a board of county commissioners can alter the amount of compensation to be paid to county officers was addressed in Attorney General Opinion No. 81-86. In that opinion, the county commissioners of Clay County inquired whether they had the authority to reduce the amount of salary paid to a newly appointed county treasurer who did not possess the knowledge and experience of the former county treasurer. We concluded that the broad "county home rule statutes" enacted in 1974 (L. 1974, Ch. 110) did grant the county commissioners the power to change the amount of compensation to be paid to the Clay County Treasurer for calendar year 1981.

The fixing of salaries for county officers has always been a legislative function and, until 1976, the legislature fixed the salary of county officers. See, e.g., L. 1974, Ch. 361. However, as you inform us, the Sherman County Commissioners, pursuant to their home rule powers (K.S.A. 1984 Supp. 19-101a, as amended by L. 1985, ch. 208, §1) determined that the duly-elected county attorney of Sherman County shall receive an annual salary as set by the board of county commissioners, with that procedure followed since September 4, 1975. Since that time, following enactment of the county home rule statutes in 1974 (L. 1974, Ch. 110), the legislature has repealed most of the statutes relating to the compensation of county officers, and now allows such matters to be determined by the locally elected boards of county commissioners. Thus, in establishing the salary to be paid to the county attorney, the board was acting in a legislative function, as had the legislature itself prior to 1976.

In the case of Miller v. Ottawa County Comm'rs, 146 Kan. 481 (1937), the court was called upon to decide whether a board of county commissioners possessed the power to reduce the salary of a county engineer, after he had commenced his term of duty. In concluding that such power existed, the court said:

"In the case of Harvey, Treas., v. Comm'rs of Rush Co., 32 Kan. 159, 4 Pac. 153, it was contended by three county officers of Rush county that the election and qualification of a county officer is a contract entitling him to compensation for his services during the term for which he is elected, and that the legislature is prohibited from making a law to diminish the salary of an officer elected and

qualified before its passage. It was there held:

"'A county office is not a contract, and the incumbent is not protected in it by the prohibition of the federal constitution against the impairment of the obligation of contracts. A county officer has not such vested interest in the salary as will prevent the legislature from diminishing it during his term of office. (Comm'rs of Norton Co. v. Shoemaker, 27 Kan. 77; Gray v. Crockett, 30 Kan. 138, 143.)' (Syl.)

"In the body of the opinion it was stated:

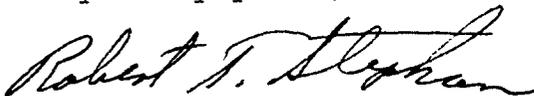
"'Public offices in this state are mere agencies for the benefit of the people--not contracts on their part with the officeholder for his benefit. Therefore, there is no contract, express or implied, between a public officer and the state or county whose agent he is. Officeholders have no agreement or contract that they shall receive any particular compensation for the term they hold office. Their terms are fixed with the view to public utility and convenience, and not for the purpose of granting the emoluments or salary during any fixed period to the officeholder. The legislature may exercise its control by increasing or diminishing the salary or emoluments of an office. . . .' (p. 162) (See, also, Coulter v. Pool, 187 Cal. 181, 201 Pac. 120.)" 146 Kan. at 486.

As the court has determined that the legislature, when it fixed the salaries of county officers, could diminish those salaries even during a term of office, and as the legislative function of fixing the salaries of county officers now is performed by local boards of county commissioners, we believe the boards of county commissioners possess the same power to alter the salaries of county officers as was possessed by the legislature. Thus, it is our opinion that the Board of County Commissioners of Sherman County may reduce the salary of the

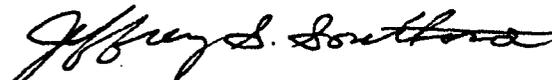
county attorney by following the procedures in K.S.A. 79-2929a to amend the budget which was initially adopted for that year.

In conclusion, a board of county commissioners may reduce the salary of the county attorney under the broad home rule powers granted such board by K.S.A. 1984 Supp. 19-101a, as amended by L. 1985, ch. 208, §1, provided the publication, notice and hearing requirements of K.S.A. 79-2929a are followed in amending the current budget.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:BPA:crw