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February 13, 1986

ATTORNEY GENERAL OPINION NO. 86- 21

Charles A. Peckham
Rawlins County Attorney
Rawlins County Courthouse
Atwood, Kansas 67730

Re: Counties and County Officers -- Miscellaneous
Provisions -- Office Hours of the District Court

Synopsis: The power given to a board of county commissioners under K.S.A. 19-2601 to fix the days and hours which county offices are open does not extend to authority over the district court. Under Article 3, §1 of the Kansas Constitution, and K.S.A. 20-101, the Supreme Court of Kansas has general administrative authority over all courts in Kansas. Thus, it is the state supreme court, not the county, which has the authority to determine the hours and holidays which each district court will observe. Accordingly, if the district court does not close its offices on a day which the county observes as a legal holiday, the county must make arrangements to keep the county courthouse open for district court business. Furthermore, the observance of a legal holiday by either the district court or the county offices will not invalidate judicial or official acts performed on that day by the other government entity. Cited herein: K.S.A. 1985 Supp. 19-101a; K.S.A. 19-104; 19-2601; 20-101; 20-342; Kansas Const., Art. 3, §1.

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Dear Mr. Peckham:

As Rawlins County Attorney, you request our opinion concerning the authority of the county commissioners to establish hours during which the district court is open. You state that recently the county offices were open on a national holiday while the district court offices were closed, despite a request by the county commissioners that this not be done. You furthermore note the possibility that the county offices would be closed for a county holiday, while the district court offices would remain open on the same day.

K.S.A. 19-104 provides:

"Each county organized for judicial purposes shall, at its own expense, provide a suitable courthouse and a suitable and sufficient jail, and fire-proof offices and other necessary county buildings, and keep the same in repair."

K.S.A. 19-2601 deals with the location and office hours of county offices, and states in relevant part:

"Every county officer shall keep his or her office at the seat of justice of such county, and [the board of county commissioners] shall keep the same open during such days and hours as shall be fixed by the board of county commissioners."

Thus, the statute gives the board of commissioners specific authority to fix the days and hours which county offices will be open.

It would therefore appear that the commissioners have statutorily been granted the right to determine the hours that the county courthouse will remain open. However, we call your attention to Article 3, Section 1 of the Kansas Constitution, and to legislation passed in 1976 by the Kansas Legislature which unified the court system by placing all courts under the supervision of the Kansas Supreme Court.

Article 3, Section 1 of the Kansas Constitution provides in pertinent part:

"The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law The supreme court shall have general administrative authority over all courts in this state." (Emphasis added.)

K.S.A. 20-101 goes on to state:

". . . As provided by section 1 of article 3 of the Kansas constitution, the supreme court shall have general administrative authority over all courts in this state, and the supreme court and each justice thereof shall have such specific powers and duties in exercising said administrative authority as may be prescribed by law"

Clearly, the district courts are part of a state system, and the Kansas Supreme Court has supervisory power over the district court in each county. The question remains, then, whether it is the county or the state which has the authority to determine the hours and holidays of a state supervised court which is located in a county-owned and operated building.

In making such a determination, it is helpful to examine the general home rule powers granted to a board of county commissioners under K.S.A. 1985 Supp. 19-101a. The statute provides at subsection (a):

"The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations or prohibitions: (3) Counties may not affect the courts located therein."

Thus, the statute which grants broad home rule power to the board of commissioners for the purpose of transacting all county business and performing all powers of local legislation and administration which it deems appropriate, specifically prohibits the board from affecting the courts located within the county. In our opinion, any attempt by the board of

commissioners to regulate the hours which the district court is open would be an example of the type of action which subsection (3) is designed to prohibit.

Furthermore, the district court is specifically granted the power to control its own administrative operations by statute. K.S.A. 20-342 deals with district court rules, and states:

"After consultation with the district magistrate judges of such court, each district court, by action of a majority of the district judges and associate district judges thereof, may promulgate such rules as may be necessary to provide for the administrative operations of such court and to facilitate the regulation and supervision of the nonjudicial personnel thereof." (Emphasis added.)

In our opinion, these statutes taken together clearly provide that the district court, as a subdivision of the supreme court, is not subject to regulation by the county. A necessary corollary of the statutory language is that, if the district court does not close its offices on a day which the county observes as a legal holiday, the county must provide that the district court remain open for business.

We note in this regard that there is nothing to prevent either the district court or the county offices from acting in their official capacity on a day which the other has chosen to observe as a legal holiday. In Canaday v. Scott County, 104 Kan. 785 (1919), plaintiffs contended that action taken by the defendant board of county commissioners was void because the board had taken the action in question on a legal holiday, Labor Day. The Kansas Supreme Court disagreed, and wrote, in pertinent part:

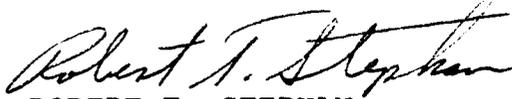
"The designation by statute of a day as a legal holiday does not invalidate official or judicial acts performed on that day, unless the statute expressly or by clear implication prohibits the performance of those acts. . . . the statute making the first Monday in September a legal holiday neither expressly nor impliedly prohibits any court or officer from acting on that

day." (Citations omitted.) (Emphasis added.) Id. at 787.

See also, Smith v. Robertson, 155 Kan. 706 (1942); 40 C.J.S., Holidays, §§3, 6.

In conclusion, it is our opinion that the power given to a board of county commissioners under K.S.A. 19-2601 to fix the days and hours which county offices are open does not extend to authority over the district court. Under Article 3, §1 of the Kansas Constitution, and K.S.A. 20-101, the Supreme Court of Kansas has general administrative authority over all courts in Kansas. Thus, it is the state supreme court, not the county, which has the authority to determine the hours and holidays which each district court will observe. Accordingly, if the district court does not close its offices on a day which the county observes as a legal holiday, the county must make arrangements to keep the county courthouse open for district court business. Furthermore, the observance of a legal holiday by either the district court or the county offices will not invalidate judicial or official acts performed on that day by the other government entity.

Very truly yours,



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ATTORNEY GENERAL OF KANSAS



Barbara P. Allen
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RTS:JSS:BPA:crw