



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 22, 1987

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

ATTORNEY GENERAL OPINION NO. 87-14

Ed E. Ritchie
Shawnee County Sheriff
200 East 7th
Topeka, Kansas 66603

Re: Counties and County Officers -- Sheriff -- Line
Item Restriction of Sheriff's Budget

Synopsis: K.S.A. 1986 Supp. 19-805(d) states that any personnel action taken by the sheriff shall be subject to the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners. Additionally, county commissioner statutes vest the authority and responsibility for the control of county expenditures in the board of county commissioners. In light of these statutory provisions, a board of county commissioners is authorized to restrict the sheriff from transferring monies from one line item to another even if the sheriff does not exceed the total budget appropriated to the sheriff's department for the year. Cited herein: K.S.A. 19-212; 19-229; K.S.A. 1986 Supp. 19-805(d).

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Dear Sheriff Ritchie:

As sheriff of Shawnee County, you request our opinion on a question which relates to the control of county funds once they have been designated to a line item within the sheriff's budget. Specifically, you inform us that the Shawnee County Board of County Commissioners has restricted the line item for salaries and wages in the 1987 sheriff's budget through an

agreement with the Fraternal Order of Police, Topeka. The agreement, over your objection, contains the following section:

"Section 12.5 - All monies approved by the County for payment of salaries and wages in the Sheriff's Department budget shall be spent solely for said salaries and wages."

You inquire whether such an agreement, which allows the board of county commissioners to restrict the sheriff from transferring monies from one line item to another even if the total budget appropriated to the sheriff's department for the year is not exceeded, is legal.

In order to answer your inquiry, it is necessary to examine K.S.A. 1986 Supp. 19-805, which provides at subsection (d):

"Any personnel action taken by the sheriff under this section shall be subject to the following: (1) Personnel policies and procedures establish by the board of county commissioners for all county employees other than elected officials; (2) any pay plan established by the board of county commissioners for all county employees other than elected officials; (3) any applicable collective bargaining agreements or civil service system; and (4) the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners." (Emphasis added.)

Thus, under subsection (d) (4), any personnel action taken by the sheriff under K.S.A. 1986 Supp. 19-805 shall be subject to the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners. Further, county commissioner statutes clearly vest the authority and responsibility for the control of county expenditures in the board of county commissioners. K.S.A. 19-212 provides in part:

"The board of county commissioners of each county shall have the power, at any meeting:

. . . .

"Second. To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the county; and when so settled, they may issue county orders therefor, as provided by law.

. . . .

"Sixth. To represent the county and have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law."

In addition, K.S.A. 19-229 provides:

"The boards of county commissioners of the several counties of this state shall have exclusive control of all expenditures accruing, either in the publication of the delinquent tax lists, treasurer's notices, county printing, or any other county expenditures." (Emphasis added.)

While previous opinions of this office have recognized that the power of the board of county commissioners is not without limitation (See Attorney General Opinion Nos. 80-69, 84-53, 86-140), the question you present requires application of the general rule set forth in Attorney General Opinion No. 80-69 that the board of county commissioners is vested with the authority and responsibility for overseeing the expenditure of county funds. Accordingly, we believe this general budgetary authority gives the board of county commissioners the inherent power to require that monies allotted to a specific line item within the general budget be spent on that line item. Thus, in our opinion, the commission is authorized to restrict the sheriff from transferring monies from one line item to another, even if the sheriff does not exceed the total budget appropriated to the sheriff's department for the year.

We wish to state that we are aware of and are in agreement with the decision of Herzog v. Board of County Commissioners of the County of Ellis, decided March 18, 1982, by the Honorable Charles E. Worden. The decision states at page 7:

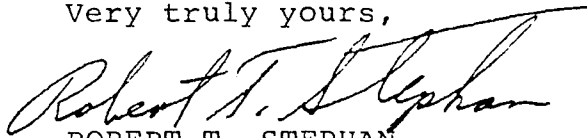
"[f]rom the point at which the budget has been formally approved forward, the Plaintiff has the statutory power, via

K.S.A. 19-1202, K.S.A. 28-84 [sic], K.S.A. 28-167 and K.S.A. 19-235, to completely control the expenditures of her office for personnel purposes, so long as she does not exceed the budget." (Emphasis added.)

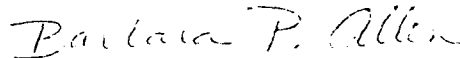
In our opinion, this language supports the general authority of the board of county commissioners regarding the expenditure of county funds, and simply emphasizes that once the commissioners have approved funds within an officer's budget for a particular purpose (i.e. personnel), the officer may spend the funds for that purpose as he or she sees fit. Similarly, we conclude that once a board of county commissioners has designated county funds to a particular line item within the sheriff's budget, the sheriff has the authority to spend those funds for that line item as he or she sees fit. However, in light of the provisions of K.S.A. 1986 Supp. 19-805(d) (4), as well as county commissioner statutes which vest the authority and responsibility for the control of county expenditures in the board of county commissioners, we conclude that the sheriff may not transfer monies from one line item to another without the consent of the county commission.

In summary, K.S.A. 1986 Supp. 19-805(d) states that any personnel action taken by the sheriff shall be subject to the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners. Additionally, county commissioner statutes vest the authority and responsibility for the control of county expenditures in the board of county commissioners. In light of these statutory provisions, a board of county commissioners is authorized to restrict the sheriff from transferring monies from one line item to another even if the sheriff does not exceed the total budget appropriated to the sheriff's department for the year.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen
Assistant Attorney General