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ATTORNEY GENERAL OPINION NO. 87- 37

Mr. Gary F. Caldwell  
Clay County Sheriff  
P.O. Box 115  
Clay Center, KS 67432

Re: Counties and County Officers -- Sheriff -- Budget;  
Limitation of Personnel Action

Counties and County Officers -- County  
Commissioners; Powers and Duties -- Control Over  
Expenditures

Public Health -- Alcoholism and Intoxication  
Treatment -- County Alcohol and Drug Program

Synopsis: The general authority over county expenditures  
vested in a board of county commissioners pursuant  
to the county commissioner statutes (K.S.A. 19-212;  
19-229) may be limited by competing statutory  
provisions and the discretion which county  
officials are entitled to exercise over  
specifically allocated budget amounts.

A county may use funds raised under K.S.A. 65-4060  
to purchase portable breath testers for  
prescreening D.U.I. suspects, as D.U.I.  
enforcement is a program the principal purpose of  
which is related to the treatment and/or prevention  
of alcohol or drug abuse. Cited herein: K.S.A.  
1986 Supp. 8-1567; K.S.A. 19-212; K.S.A. 1986  
Supp. 19-805; K.S.A. 65-4060; 79-2927; 79-2929a;  
79-2934.

Dear Sheriff Caldwell:

As sheriff of Clay County, you request our opinion concerning the relationship between the board of county commissioners and the sheriff in regard to the sheriff's budget and county personnel policies. For purposes of clarity, we will analyze your various questions separately.

1) You first inquire as to whether the board of county commissioners can reserve the right to grant prior approval for purchases over \$200 when the amount is provided for within the previously approved budget. Your inquiry relates to the proper interpretation of K.S.A. 1986 Supp. 19-805(c), which provides:

"The sheriff shall submit a budget for the financing of the operation of the sheriff's office to the board of county commissioners for their approval."

The authority and responsibility for the control of county expenditures is clearly vested 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).

A review of these statutes, along with a Kansas Supreme Court decision and several previous opinions of this office, leads one to conclude that little remains outside the scope of the county commission's power regarding financial matters of the county. See Attorney General Opinion No. 82-85 and Hackler v. Board of County Commissioners, 189 Kan. 697, 698 (1962). However, while the board of county commissioners possesses broad powers over county expenditures, these powers are not without limitation. See Attorney General Opinions No. 80-69; 84-53; 86-166.

Opinion No. 80-69 found that as a general rule the board of county commissioners is vested with the authority and responsibility for overseeing the expenditure of county funds. However, the opinion also noted that an exception to the general rule exists when the expenditure or obligation is necessary in order for an elected official to carry out his or her statutorily imposed duties or obligations. Therefore, Opinion No. 80-69 concluded that while the commission's general authority over county expenditures prevails in the area of optional or discretionary expenditures, circumstances may exist where the general rule must give way to competing statutory provisions which require expenditure of county funds. Accordingly, determining the nature of the expenditure is crucial in deciding whether it is necessary to obtain the prior approval of the commission before expending county funds.

In Attorney General Opinion No. 84-53, we were asked whether the language in K.S.A. 19-805(b) limits the general authority of county commissioners regarding the expenditure of county funds. After reviewing the conclusions reached in Opinion No. 80-69, Opinion No. 84-53 found that a sheriff's authority under subsection (b) to attend or require attendance at meetings or seminars which are deemed beneficial to the operations of the office does not entirely fit into either the "directly necessary" or "discretionary" category.

Attorney General Opinion No. 86-166 concurred with the conclusions reached in Opinions No. 80-69 and 84-53. We

concluded that in light of our earlier interpretation that funds expended by a sheriff under K.S.A. 1986 Supp. 19-805(b) are neither "directly necessary" nor "discretionary," a policy of "shared discretion" (i.e. a grant of limited authority regarding expenditures from the board of county commissioners to the official) is both appropriate and required by the terms of K.S.A. 1986 Supp. 19-805(b).

Since your inquiry relates to prior approval by the board of county commissioners of all items purchased by the sheriff which cost more than \$200, it is impossible for us to determine the nature of each expenditure for which the commissioners wish to require prior approval. As a general rule, if the expenditure is optional or discretionary, the commissioner's general authority over county expenditures will prevail, and the commission can reserve the right to grant prior approval for items purchased with the sheriff's budget. Alternatively, if the expenditure is necessary for the sheriff to carry out his or her statutorily imposed duties (see, e.g., K.S.A. 1986 Supp. 74-5607a), the general rule must give way to competing statutory provisions which require expenditure of county funds, and the commission will be prohibited from requiring prior approval. See Attorney General Opinion No. 80-69.

We recognize that many expenditures by the sheriff's office do not entirely fit into either the "directly necessary" or "discretionary" category, as they may be important to the efficient operation of the sheriff's office even though they are not "necessary" in the strict sense of the word. Therefore, we once again recommend the policy of "shared discretion" described in previous opinions of this office. See Attorney General Opinions No. 80-69; 84-53; 86-166. Shared discretion could effectively reconcile the competing interests of the county commissioners and the sheriff under K.S.A. 1986 Supp. 19-805. If the commission would approve a specific sum for every line item in each annual budget, there would be no need for the sheriff to seek approval from the commission before expending such sums. Thus, the sheriff would retain authority to manage his or her office, while the county commissioners would retain annual budget control and consequently, the overall fiscal management of the county.

In our opinion, a sheriff must have control over the funds allocated to his or her office by the county commission in order to effectively perform his or her job. If the commissioners approve a budget in general terms which does not include specific sums for each line item and then require

prior approval before the sheriff may expend money for any item over \$200, the grant of authority to the sheriff found in K.S.A. 1986 Supp. 19-805 is effectively cancelled. In that we do not believe this was the intention of the legislature, it is our opinion that the only means of reconciling the competing interests of the sheriff and the commissioners in regard to funds expended in the sheriff's budget is through the policy of "shared discretion" described above.

2) You next ask under what circumstances during the fiscal year can the county commissioners take away spending authority granted by the budget. Responding to this question necessarily involves an examination of the Budget Law, K.S.A. 79-2925 et seq.

K.S.A. 79-2927 requires the governing body of each taxing subdivision or municipality to formulate a budget annually. If a governing body which is subject to the Budget Law wishes to amend its adopted current budget during the year in which such budget is in effect, K.S.A. 79-2929a requires it to be subject to the same publication, notice and public hearing requirements required by K.S.A. 79-2929. That statute provides in part:

"Prior to the filing of the adopted budget with the county clerk, the governing body of each taxing or political subdivision or municipality shall meet for the purpose of answering and hearing objections of taxpayers relating to the proposed budget and for the purpose of considering amendments to such proposed budget. The governing body shall give at least 10 days' notice of the time and place of the meeting by publication in a weekly or daily newspaper of the county having a general circulation therein. Such notice shall include the proposed budget and shall set out all essential items in the budget except such groupings as designated by the director of accounts and reports on a special publication form prescribed by the director of accounts and reports and furnished with the regular budget form." (Emphasis added).

After examining the Budget Law, Attorney General Opinion No. 85-147 determined that the board of county commissioners could

reduce the salary of a county attorney if it first followed the publication, notice, and hearing requirements of K.S.A. 79-2929a. Likewise, it is our opinion that the board of county commissioners has been granted the power under the county commissioner statutes (K.S.A. 19-212; 19-229) to alter the approved budget of the sheriff, thus taking away spending authority granted by that budget, as long as it follows the procedures to amend the budget set forth in K.S.A. 79-2929a.

3) Your third question concerns whether the sheriff needs county approval to hire additional staff if the budget permits. K.S.A. 1986 Supp. 19-805(a) empowers the sheriff of each county "to appoint, promote, demote and dismiss additional deputies and assistants necessary to carry out the duties of the office," while K.S.A. 1986 Supp. 19-805(d)(4) 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." Therefore, the statute gives the sheriff hiring power, subject to the limitation that any expenditures made in this regard stay within the budget for the sheriff's office as approved by the county commissioners.

In Attorney General Opinion No. 87-14, we concluded "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 limitation in K.S.A. 1986 Supp. 19-805(d)(4), as well as the county commissioner statutes which vest authority and responsibility for the control of county expenditures in the board of county commissioners, we also concluded that the sheriff may not transfer monies from one line item to another without the consent of the county commission.

We concur with Attorney General Opinion No. 87-14, and reemphasize 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. If a county were to specifically designate a certain amount of funds for each line item in the sheriff's budget, it would be following our recommendation for a policy of "shared discretion" described earlier in this opinion. (See question no. 1) A specific amount allotted to the sheriff for salaries and wages would automatically reconcile the competing interests of the county commissioners and the sheriff. The sheriff could exercise the grant of authority for hiring additional staff

within his or her budget found in K.S.A. 1986 Supp. 19-805(a), while the commissioners would retain their grant of authority over personnel action taken by the sheriff, via the budget, found in K.S.A. 1986 Supp. 19-805(d)(4).

We believe that the legislature intended to subject the sheriff's hiring practices to the commission's approval only with regard to budgetary limitations. Thus, theoretically, the sheriff should be free to hire additional staff without the commission's prior approval, as long as he or she does not exceed his or her budget for a given year. However, in light of our previous interpretation of K.S.A. 1986 Supp. 19-805 and relevant county commissioner statutes, we recognize that the commission may require prior approval of all expenditures by the sheriff's office (including additional staff), unless the commissioners have chosen to implement a policy of "shared discretion."

4) You next ask what type of county work rules the county commission may require of elected officers, and whether, within budget limitations, a sheriff can establish different pay scales within his office without prior board approval.

K.S.A. 1986 Supp. 19-101a grants the board of county commissioners the power to "transact all county business and perform all powers of local legislation and administration it deems appropriate," and thereby authorizes the commission to deal with all personnel matters involving county officers and employees. See Attorney General Opinion No. 79-264. This power is, of course, subject to acts of the legislature which apply uniformly to all counties. K.S.A. 1986 Supp. 19-101a(1).

The adoption of county personnel policies and pay plans is clearly a matter of "county business." Therefore, subject to uniform state laws, it is our opinion that the board of county commissioners is authorized to enact both legislative and administrative standards and directives governing the personnel policies of the county. Said policies could apply to both elected county officials and to county employees. For example, the board is authorized to determine the number of persons to be employed in the offices of other county elected offices, to fix the compensation of officers and their employees, to prescribe the operating hours of the county officers and their employees [see Whitmer v. House, 198 Kan. 629 (1967)], and to prescribe other conditions of employment such as sick leave policies and rules concerning absenteeism. See Attorney General Opinion No. 77-113.

To answer your question on pay scales, we refer once again to K.S.A. 1986 Supp. 19-805(d). The subsection provides:

"Any personnel action taken by the sheriff under this section shall be subject to the following: (1) Personnel policies and procedures established 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."

This language clearly states that any personnel action taken by the sheriff under this section shall be subject to county personnel policies and pay plans established by the board of county commissioners for all county employees except elected officials. In the absence of personnel policies or agreements affecting personnel, it is our opinion that a sheriff can establish different pay scales for positions within his office without the prior approval of the board of county commissioners, as long as the sheriff stays within the budget allocated to his office by the commissioners. See also Attorney General Opinion No. 84-30.

5) You next ask whether property acquired with funds in the sheriff's budget is subject to transfer by the commission to other county offices.

K.S.A. 19-212 provides in part:

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

. . . .

"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."  
(Emphasis added).

As noted previously in this and other Attorney General Opinions, the statutory powers of the board of county commissioners over county expenditures are broad, but they are not without limitation. See Attorney General Opinions No. 80-69; 84-53; 86-166; 87-14.

In Opinion No. 87-14, we articulated the general proposition 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."

In light of the competing interests of the county commissioners and the sheriff in regard to county property purchased with funds in the sheriff's budget, we feel this question can best be answered by looking at whether the commissioners have chosen to implement a policy of "shared discretion" in the county for management of the sheriff's budget. If the board of county commissioner has specifically approved a line item amount for equipment in the sheriff's budget, we believe the commissioners would be overreaching their statutory powers regarding the financial matters of the county if they attempted to transfer equipment in the sheriff's office purchased with line item "equipment" funds to another county office. On the other hand, if the board of county commissioners has approved the sheriff's budget in general terms only, we recognize that the commissioners would have the authority, via their general powers over county expenditures and specifically over the care of county property (K.S.A. 19-212; 19-229), to transfer equipment in the sheriff's office purchased with general funds to other county offices.

6) Finally, you ask in a separate letter whether the purchase of portable breath testers for prescreening D.U.I. suspects is within the spirit of K.S.A. 65-4060, which establishes a fund under the board of county commissioners' control for use in drug and alcohol education and intervention programs. You inform us that the Clay County Attorney has ruled that previous purchases of an intoxilyzer breath tester and a video tape system were proper, under the assumption that D.U.I. enforcement is an intervention program and that, under K.S.A. 1986 Supp. 8-1567, it is often the first step in placing someone in a treatment program.

K.S.A. 65-4060, the statute which provides a procedure by which the board of county commissioners may create special county alcohol and drug programs, states at subsection (d):

"All moneys received pursuant to this act shall be deposited in a special alcohol and drug programs fund which shall be under the direction and control of the board of county commissioners and shall be expended only for the purchase, establishment, maintenance or expansion of services or programs whose principal purpose is alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse, treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers and rehabilitation of the family of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers." (Emphasis added).

Thus, subsection (d) specifically limits the use of moneys received pursuant to K.S.A. 65-4060 to services or programs whose principal purpose is related to the treatment and/or prevention of alcohol or drug abuse.

K.S.A. 1986 Supp. 8-1567(d)(2) provides that, upon a first conviction of a D.U.I. offense, the court shall enter an order which:

"requires that the person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs."

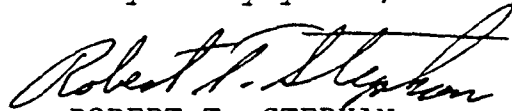
Since a D.U.I. offender must first be convicted before he or she must enroll in an appropriate education and/or treatment program, and D.U.I. enforcement equipment assists the arresting officer in gathering evidence sufficient to convict, it is our opinion that acquisition of the aforementioned equipment would fall within the parameters of the expenditure limitations specified in K.S.A. 65-4060 for funds raised under that act. Accordingly, in our opinion, the portable breath

testers can be purchased with funds accumulated under K.S.A. 65-4060.

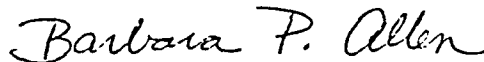
In summary, the general authority over county expenditures vested in a board of county commissioners pursuant to the county commissioner statutes (K.S.A. 19-212; 19-229) may be limited by competing statutory provisions and the discretion which county officials are entitled to exercise over specifically allocated budget amounts.

A county may use funds raised under K.S.A. 65-4060 to purchase portable breath testers for prescreening D.U.I. suspects, as D.U.I. enforcement is a program the principal purpose of which is related to the treatment and/or prevention of alcohol or drug abuse.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



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