



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 50

James H. Nickel
Ernest S. Kistler
John M. Sears
Thomas County Commissioners
300 N. Court
Colby, Kansas 67701

Re: Counties and County Officers -- County Attorney --
Duties

Criminal Procedure -- Uniform Criminal Extradition
Act -- Change of Venue

Synopsis: K.S.A. 28-175 and K.S.A. 19-705 prohibit additional compensation or fees for performance of duties connected with the office of county attorney beyond what is specifically allowed by law. Case law uniformly allows additional compensation to be paid when a county attorney performs legal services outside the county's jurisdiction. While K.S.A. 22-2616(4) requires a county attorney to remain responsible for prosecution of cases transferred to another venue pursuant to that statute, it does not prohibit compensation or evidence legislative intent to abolish this case law. It is therefore our opinion that the county attorney may properly receive additional compensation for services rendered in another county pursuant to K.S.A. 22-2616(4). Cited herein: K.S.A. 2-1208a; 8-605; 9-2014; 17-1267; 19-701; K.S.A. 1987 Supp. 19-702; 19-703; K.S.A. 19-705; 19-723; 22-2616(4); 22-3902; 22a-107; 28-175; 65-4036.

* * *

Dear Commissioners:

As the Board of County Commissioners for Thomas county (board), you request our opinion on the matter of compensating a county attorney for legal services performed in connection with a criminal prosecution case which arose in Thomas county. You inform us that the defendant in a murder trial was granted a second trial and that a change of venue was then granted, thus moving the trial from Thomas county to Ellis county. A special prosecutor was hired by Thomas county and the Thomas county attorney assisted that special prosecutor. The county attorney had previously entered into an agreement with the board through which the board agreed to pay the county attorney an hourly rate for legal services performed by the county attorney which are not statutorily mandated. The county attorney subsequently submitted a bill to the board for legal services performed in connection with assisting the special prosecutor in the aforementioned murder trial. You now ask our opinion as to whether the county attorney is entitled to legal fees over and above his regular salary for services performed in this matter.

Much authority exists concerning the compensation of county attorneys. See e.g. Edwards County Comm'rs v. Simmons, 159 Kan. 41 (1940); Heinz v. Shawnee County Comm'rs, 136 Kan. 104 (1932); Nichols v. Shawnee County, 76 Kan. 266 (1907); Huffman v. Board of Comm'rs of Greenwood Co., 23 Kan. 281 (1880), rehearing 25 Kan. 64 (1881); Commissioners of Leavenworth Co. v. Brewer, 9 Kan. 307 (1872); Attorney General Opinions No. 88-28, 87-179, 81-186, 75-43, and 61-27. The general rule emerging from these authorities appears to be that a county attorney is entitled to additional compensation for services done on behalf of the county when those services go beyond the duties statutorily required of a county attorney or if the services are performed outside the jurisdiction of the county.

K.S.A. 19-701 et seq. contains the general law regarding county attorneys. K.S.A. 1987 Supp. 19-702 sets forth the basic duties of the county attorney and includes the duty to "prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or the county is a party or interested." K.S.A. 1987 Supp. 19-703 mandates the appearance of a county attorney before any judge of the district court of the county when the judge requests appearance in criminal prosecution cases. K.S.A. 19-723

allows the board of county commissioners to employ an additional attorney to assist the county attorney in connection with "any civil or criminal matter involving the duties of said county attorney. . . ."

We find no existing case law or Attorney General opinions concerning the duty of a county attorney, or the availability of additional compensation to that county attorney, in connection with assistance in a criminal prosecution case that has been transferred pursuant to a change of venue order. K.S.A. 22-2616 authorizes such a change of venue order and additionally states in pertinent part:

"(4) When any case is transferred to another county under this section the responsibility for prosecution of the case shall remain with the original prosecuting attorney or his successor." (Emphasis added).

Statutory construction rules mandate interpretation in accordance with the plain meaning of the language and intent of the legislature. Reardon v. Krimm, 541 F.Supp. 1232 (Kan. 1982). Where a statute is plain and unambiguous, the intention expressed by the legislature must be given effect. Randall v. Seeman, 228 Kan. 395 (1980).

The plain language contained in K.S.A. 22-2616(4) clearly imposes a continuing prosecutorial duty upon a county attorney. See also K.S.A. 22a-107. Thus, a venue change does not divest or relieve the county attorney of duties connected with the matter. Enacted in 1970, the language in K.S.A. 22-2616(4) remains unchanged from the original version. It is presumed that the legislature acted with full knowledge of prior law. Rogers v. Shanahan, 221 Kan. 221 (1976). Thus, it may be assumed that the legislature enacted K.S.A. 22-2616(4) while aware of previous case law allowing a county attorney to receive additional compensation for prosecuting criminal cases outside the boundaries of his county. K.S.A. 22-2616(4) obviously creates such a duty. However, it does not speak to the issue of compensation.

K.S.A 28-175 discusses the fees and compensation properly retained by county officers and employees and states:

"County officers and employees shall receive no compensation, tips, fees, mileage or salaries, which compensation,

tips, fees, mileage or salaries are or shall be paid to such officer or employee directly or indirectly by reason of his or her performance of the duties or obligations of such county office or employment, unless such compensation, tips, fees, mileage or salaries are specifically allowed to them by law." (Emphasis added).

Thus, if a county attorney performs a duty or obligation connected with that office he may not receive any additional compensation unless specifically allowed by law. (See also K.S.A. 19-705). Case law uniformly allows additional compensation to county attorneys when performing services for the county that extend beyond the boundaries of the county.

K.S.A. 22-2616(4) establishes a statutorily imposed official duty that extends beyond the borders of the county, but it does not overrule case law allowing additional compensation to be made. Thus, there is no clear legislative intent to depart from established case law which uniformly allows additional compensation. Therefore, it is our opinion that the board of county commissioners may properly make payment of additional compensation to the county attorney for legal services performed within the scope of the duty mandated under K.S.A. 22-2616(4).

Very truly yours,



ROBERT T. STEPHAN
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Theresa Marcel Nuckolls
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