



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 131

Doug Martin  
Shawnee County Counselor  
Courthouse, Room 203  
200 E. 7th  
Topeka, Kansas 66603-3922

Re: Counties and County Officers -- County Treasurer --  
Deputy Treasurers; Budget; Limitation of Personnel  
Action

Counties and County Officers -- County  
Commissioners; Powers and Duties -- Powers of Board  
of Commissioners; Authority Over Employment of  
Assistants by County Treasurer

Synopsis: If the yearly budget established by the board of  
county commissioners includes either a line item  
for salaries for county treasurer personnel or  
another fund that may be properly expended for  
personnel salaries, and those funds have been  
previously expended or committed, the county  
treasurer is subject to that budget and may not  
commit additional funds without the approval of the  
board of county commissioners. K.S.A. 19-503  
authorizes the county treasurer to employ deputies  
and assistants but such action is subject to  
budgetary restrictions and any existing county  
employee policies that are applicable to all county  
employees. Cited herein: K.S.A. 10-1113;  
19-212; 19-229; 19-235; 19-241; 19-302; 19-503;  
19-803; 19-805; 19-4301; 79-2934; 79-2935; 79-2936.

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Dear Mr. Martin:

As Shawnee County Counselor you request our opinion regarding employee appointments made by your county treasurer. The issues you present concern whether the board of county commissioners may require another elected county official to comply with county employee policies and procedures and whether the salaries paid to a county treasurer's unclassified personnel are subject to budgetary constraints.

This office has previously addressed the interaction between authority granted to the board of county commissioners and other elected officials. See Attorney General Opinions No. 88-171, 87-37, 87-14, 86-166, 85-147, 84-53, 81-86, 80-69, 79-279, and 79-113. As discussed in these opinions, the Kansas statutes vest county fiscal management and legislative authority in the board of county commissioners. The various required duties and authorities enjoyed by other elected county officials are also statutorily established. Thus, Kansas statutes delineate the degree and nature of authority vested in each county officer.

Pursuant to K.S.A. 19-212, 19-229 and general budgetary procedures, the board of county commissioners exercise authority over county expenditures. See also State v. Garnett, 180 Kan. 405, 407 (1956). K.S.A. 19-212, 19-235, and 19-241 permit the board of county commissioners certain authority over payments to county employees hired by other elected officials. Discretionary expenditures may be authorized or eliminated by the board. Gonser v. Board of County Commissioners, 1 Kan.App.2d 57 (1977). An exception to the general rule permitting the board to determine when and where to spend county moneys exists when funds are included in the budget of another elected official or the expenditure is required by another elected official in order to carry out statutorily imposed duties. Absent funds properly budgeted for a particular purpose or a law allowing or requiring other county officials to create an indebtedness against the county, other elected officials cannot incur expenses against the county in the absence of approval by the board of county commissioners. See Norton v. Simms, 85 Kan. 822 (1911); Commissioners of Neosho County v. Stoddart, 13 Kan. 207 (1874); Hackler v. Board of County Commissioners, 189 Kan. 697 (1962); Mt. Carmel Medical Center v. Board of County Commissioners, 1 Kan.App.2d 374 (1977). It therefore becomes necessary to determine whether the Shawnee county treasurer is committing moneys budgeted for such expenditures or whether a statute or law requires or allows the county treasurer to take the

actions which result in expenses that cannot be paid from funds previously budgeted.

K.S.A. 19-503 discusses the authority of a county treasurer to hire deputies and assistants and states:

"(a) The county treasurer may appoint a deputy, who, in the absence of the treasurer or in case of a vacancy in the office, due to any disability of the treasurer to perform the duties of the office, may perform all the duties of the office of treasurer until the vacancy is filled or the disability removed. In addition to the deputy, the county treasurer also may appoint, promote, demote and dismiss additional deputies and any assistants necessary to carry out the duties of the office. The county treasurer shall supervise all assistants in the performance of their duties. Within the limitations of the budget for the financing of the operation of the county treasurer's office as approved by the board of county commissioners, the county treasurer may attend and may require the deputies and any assistants to attend any meetings or seminars which the treasurer determines will be beneficial to the operation of the treasurer's office.

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

"(c) Any personnel action taken by the county treasurer 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 treasurer's office as approved by the board of county commissioners. (Emphasis added).

Thus, Kansas law allows a county treasurer to hire deputies and assistants. However, K.S.A. 19-503(c)(4) clearly states that "any personnel action taken by the county treasurer under this section shall be subject to . . . the budget for the financing of the operation of the treasurer's office as approved by the board of county commissioners." Thus, it appears that K.S.A. 19-503(c)(4) limits the ability of the county treasurer to pay personnel salaries that are not provided for in the budget. If the county treasurer's budget included funds for hiring deputies and assistants, any funds so budgeted may be spent for that purpose. You inform us that the portion of the Shawnee county treasurer's budget for employee costs will not cover the salaries of any new employees. However, you do not indicate whether another fund allocated to the county treasurer's office may also be properly spent for personnel salaries.

Budgetary laws and K.S.A. 19-503(c)(4) do not authorize the board of county commissioners to unreasonably or capriciously restrict the exercise of authority granted to the county treasurer. Kansas law requires that county treasurers perform certain duties. K.S.A. 19-241 requires the board of county commissioners to levy sufficient amounts to defray all county charges and expenses. In formulating a budget, the board must therefore consider many factors, including the availability of funds and the degree of need or demand for specific governmental services. The necessity for a specific expenditures is often a factual question which must be determined on a case by case basis by the entity given the authority or directed by law to take a particular action. See Commissioners of Sumner County v. Simmons, 51 Kan. 304, 309 (1893); Vernon v. Edwards County Commissioners, 132 Kan. 119, 121 (1931). As discussed in Attorney General Opinion No. 80-69, the board of county commissioners may not use budgetary authority to prevent an elected official from carrying out statutorily imposed duties. The yearly budgetary procedures permit the board to work with each elected official in formulating a reasonable compromise between county fiscal status and each county office's needs or requirements. As discussed in Attorney General Opinions No. 87-14 and 87-37, the board of county commissioners may establish a line item budget which restricts the transfer of funds from one line item to another. County elected officials may exercise authority over funds specifically allocated to their office in a line item or budgeted for general use by the county official.

Once a yearly budget is set, Kansas law generally prohibits moneys from one fund being diverted to another fund and forbids the creation of indebtedness in excess of the budget. K.S.A. 79-2934, 79-2935 and 10-1113. See also Attorney General Opinion No. 86-104. If an expenditure of county funds is authorized in violation of budgetary or cash basis laws, there may be individual liability imposed upon the person creating such indebtedness. See Superior Grade School District No. 110 v. Rhodes, 147 Kan. 29, 30 (1938) (school district treasurer and his bondsman held liable for expenditure authorized by treasurer which was not provided for in the budget). Moreover, K.S.A. 79-2936 provides that "any member of the governing body, or any other public officer of any taxing subdivision or municipality of the state, who violates the provisions of this act, shall be subject to removal from office." Thus, in order to justify expenditures beyond those approved in the budget, an elected official must demonstrate that the expenditure is necessary to fulfill duties required by law. Unless a law specifically requires that the treasurer hire additional employees or take other actions, the county treasurer must refrain from actions that incur indebtedness in excess of the established budget. It is therefore our opinion that if the budget formulated by the board of county commissioners includes a line item or general funds for salaries to be paid to county treasurer personnel, and those funds have been expended or previously committed, a reasonable interpretation of the authority granted to a county treasurer does not permit that official to exceed the personnel budget unless such additional expenditure is approved by the board.

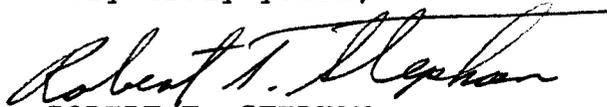
You also inquire whether a county treasurer must follow county employee policies and procedures with regard to hiring and salaries. K.S.A. 19-503(c) contains language which essentially mirrors that set forth at K.S.A. 19-302(1) and 19-805(d). L. 1983, ch. 91 enacted this new language and essentially changed some of the conclusions reached in prior Attorney General opinions issued before 1983 (e.g. Attorney General Opinion No. 79-113). While the legislature did not eliminate the authority of a county official to employ assistants, the legislature clarified the areas of control enjoyed by the board. Such areas include budget and personnel policies.

In Attorney General Opinion No. 84-30 we examined K.S.A. 19-805(d) and opined that the county sheriff was subject to those limitations stated in the statute "and, in particular, to personnel and pay policies applicable to all county employees." However, that opinion went on to note that "it does not appear that the board may control or affect through

the enactment of county personnel policies, the appointment of an undersheriff." This exception relied upon the language of K.S.A. 19-803 which requires a sheriff to appoint an undersheriff. Unlike K.S.A. 19-803, which states that "the sheriff of each county shall . . . appoint some proper person undersheriff. . . ." (emphasis added), K.S.A. 19-503(a) states that "the county treasurer may appoint a deputy . . . and may appoint, promote, demote, and dismiss additional deputies and assistants necessary to carry out the duties of the office." (Emphasis added). Thus, the law does not require a county treasurer to appoint a deputy or assistant.

It is therefore our opinion that the authority of the county treasurer to hire employees must be exercised within the budgetary constraints and employee policies applicable to all county employees. See also K.S.A. 19-4301. However, the board of county commissioners may not prevent or direct the exercise of mandatory duties performed by another elected officer. If funds are available in the budget for the purpose of hiring employees and if county employee policies do not apply or exist, the board of county commissioners cannot interfere with decisions properly made by another elected official. The board has clearly been given the statutory authority to adopt the county budget and to adopt employee policies applicable to all county employees. Working within such constraints, other county officers retain the authority to make decisions within the scope of their authority and as authorized by law.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls  
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