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ATTORNEY GENERAL OPINION NO. 89- 142

The Honorable Gayle Mollenkamp
State Representative, 118th District
HC2, Box 5
Russell Springs, Kansas 67755-0005

Re: Counties and County Officers -- County
Commissioners; Powers and Duties -- Authority to
Terminate Employment of Deputy County Appraiser

Synopsis: Absent a contractual interest or protected
constitutional right, the board of county
commissioners may terminate employment of a deputy
county appraiser. Such a termination decision
should not arbitrarily or capriciously restrict the
ability of the county appraiser to perform
mandatory duties. Cited herein: K.S.A. 19-212;
19-243; 19-425; 19-426; 19-431; 19-436; 28-824.

* * *

Dear Representative Mollenkamp:

You request our opinion on whether the board of county
commissioners has the authority to arbitrarily eliminate a
deputy position of another county official. You verbally
inform us that the deputy position in question is in the
county appraiser's office and that the budget for the office
of county appraiser contains sufficient funds for payment of
the salary to that deputy.

Previous Attorney General opinions discussing the nature and
degree of control over the budget and employment of personnel
by other county officials include opinions no. 89-131, 88-171,

87-37, 87-14, 86-166, 84-53, 84-30, 79-279, and 79-113. Generally stated, the board of county commissioners is vested with county budgetary and personnel policy decision authority. Working within those constraints, other county officials retain authority over their office. Thus, it becomes necessary to determine which entity is authorized to make employment decisions with regard to a deputy county appraiser.

K.S.A. 19-425 et seq. establish and discuss the office of county or district appraiser. K.S.A. 19-426 provides that the county or district appraiser is not elected, but rather, the board of county commissioners appoints the county or district appraiser. Unlike some employees of other county officials, employees of a county appraiser fall within the employment authority granted to the board of county commissioners. K.S.A. 19-425 discusses the appointment of deputy appraisers and provides that the county or district appraiser "shall appoint deputy appraisers and fix their salaries with the consent and approval of the board of county commissioners or district board." (Emphasis added). Thus, although the county or district appraiser chooses his or her deputies, that choice may be disapproved by the board of county commissioners. The appointment of a deputy appraiser becomes a joint decision, with the board possessing "veto" power. K.S.A. 19-431 provides a statutory procedure whereby the appointed county appraiser may be terminated by the board of county commissioners. Moreover, the state director of property valuation may also cause a county appraiser to be removed from office. The statutes do not discuss a procedure for employment termination involving a deputy county appraiser.

K.S.A. 19-436 discusses the budget of the county appraiser and Attorney General Opinions No. 86-2 and 81-156 address the power and authority of the board of county commissioners to determine how county resources are to be allocated to the county appraisers office. Attorney General Opinion No. 81-156 opined that inclusion of funds in the county appraiser's budget for compensation to special assistants did not constitute consent to employment of such assistants. It was therefore our opinion that, in addition to funding the position, the board of county commissioners must consent to and approve any appointment of specialized help to the county appraiser. However, we also recognized that K.S.A. 19-425 requires the board to provide necessary funding for assistants to the county appraiser. See also K.S.A. 19-243 and 28-824. These provisions insure that the county appraiser is

able to perform mandatory duties. Decisions made by the board of county commissioners that prevent the county appraiser from performing mandatory duties may contravene K.S.A. 28-824 and 19-243.

Pursuant to K.S.A. 19-425, the board of county commissioners must consent to the initial employment of a deputy county appraiser. Once such consent is given by the board, the statutes do not prohibit or approve revocation of that consent nor indicate that the county appraiser has sole discretion concerning the continued employment of the deputy appraiser. It is our opinion that employment decisions concerning a deputy county appraiser are decisions properly made by both the board of county commissioners and the county appraiser. However, if those entities disagree on a termination decision, it appears that K.S.A. 19-212 and K.S.A. 19-425 authorize the board of county commissioners to rescind consent and disapprove the appointment of a deputy appraiser.

As with all employment decisions made by a public body, termination decisions should be considered in light of any private contractual rights or constitutional protections afforded to an individual county employee. Absent a legally protected interest in or right to continued county employment, the board of county commissioners may terminate employment of a deputy county appraiser. Such rights are private in nature and may be asserted by the individual county employee through private legal channels.

Very truly yours,



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