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June 10, 1991

ATTORNEY GENERAL OPINION NO. 91- 65

Linda P. Jeffrey
Acting Shawnee County Counselor
Courthouse, Room 203
200 E. 7th
Topeka, Kansas 66603-3922

Re: Counties and County Officers -- County
Commissioners; Powers and Duties -- Reducing the
County Treasurer's Salary

Synopsis: A board of county commissioners has the authority to decrease the amount of an official's compensation as long as such action is not deemed to be an unreasonable or arbitrary action. However, K.S.A. 1990 Supp. 8-145 does not authorize nor was it the intent of the legislature that the board of county commissioners make the total of the county treasurer's salary contingent on the amount received pursuant to this statute. Cited herein: K.S.A. 1990 Supp. 8-145; K.S.A. 10-1101; 19-101; 19-208; 19-212; 19-229; 19-241; 19-242; 19-243; 79-2935.

* * *

Dear Ms. Jeffrey:

As acting county counselor you request our opinion regarding whether the board of county commissioners of Shawnee county can reduce the county treasurer's salary. You also inquire about the affect of K.S.A. 1990 Supp. 8-145 on the county treasurer's salary.

The county commissioners have the authority to "examine and settle all accounts of the receipts and expenses of the county. . ." and manage "the business and concerns of the county. . . ." K.S.A. 19-212. K.S.A. 19-208 states "it shall be the duty of said board of county commissioners to allow monthly, at the meetings of the board of county commissioners, as fixed in K.S.A. 19-206, any and all claims against the county, as provided by law, including claims for salaries of all county officers." Furthermore, K.S.A. 19-229 gives the county commissioners the "exclusive control" of county expenditures.

As discussed in previous opinions by this office, the board of county commissioners is vested with much discretionary authority and control over county budgetary and fiduciary matters. See Attorney General Opinions No. 87-37, 87-14, 86-166, 81-86, 80-69, and 79-279. However, as with all discretionary powers, competing interests or statutory enactments may limit exercise of such authority. County commissioners are the general agents of the county and have general control and management of county property pursuant to K.S.A. 19-101 and 19-212. State v. City of Garnett, 180 Kan. 405, 407 (1956). The cash basis (K.S.A. 10-1101 et seq.) and budget laws (K.S.A. 79-2935) restrict expenditures by the county, and "protect the public from the consequences of financial overspending and deficits." Greenlee v. Board of Clay County Commissioners, 241 Kan. 802 (1987). See also K.S.A. 19-241, 19-242, and 19-243.

Attorney General Opinion No. 81-86, in determining that the salary of county officers could be reduced by the board of county commissioners, stated:

"A county office is not a contract, and the incumbent is not protected in it by the prohibition of the federal constitution against the impairment of the obligation of contracts. A county officer has no such vested interest in the salary as will prevent the legislature from diminishing it during his term of office. (Comm'rs of Norton Co. v. Shoemaker, 27 Kan. 77 (1881); Gray v. Crockett, 30 Kan. 139, 143) (1882)."

"Public offices in this state are mere agencies for the benefit of the people--not contracts on their part with

the officeholder for his benefit. Therefore, there is no contract, express or implied, between a public officer and the state or county whose agent he is. Officeholders have no agreement or contract that they shall receive any particular compensation for the term they hold office. Their terms are fixed with the view to public utility and convenience, and not for the purpose of granting the emoluments or salary during any fixed period to the officeholder. The legislature may exercise its control by increasing or diminishing the salary or emoluments of an office. . . ." Miller v. Ottawa County Comm'rs, 146 Kan. 481, 486 (1937).

In many jurisdictions, it has been said that unless forbidden or restrained by law the salary or compensation of an officer or employee of a municipal corporation may be changed from time to time or diminished during the continuance of the term or period of employment. McQuillan, Corporations, Elections, Officers and Employees, §§ 12.196 and 12.196a. However, the board of county commissioners must act reasonably and consider such factors as the availability of funds and the degree of public need for certain governmental services. If the board acted arbitrarily and unreasonably in establishing the budget of an elected officer, without giving adequate regard to the officer's duties and responsibilities, the court could mandate the board to reconsider the budgetary decision. Gonser v. Board of County Commissioners, 1 Kan.App.2d 57 (1977); Amdahl v. County of Fillmore, 258 N.W.2d 869 (Minn. 1977). The remedy for such an action would be private. Therefore, absent any unreasonable or arbitrary action, the county commissioners are given the authority to decrease a county official's salary.

It should be noted that during the 1991 legislative session House Bill No. 2204 was introduced to prevent a reduction in a county officer's salary during the term of office. Also introduced during this legislative session was Senate Bill No. 264 which would have mandated that county treasurers be paid no less than the average gross salary of other full-time elected county officials. However, neither bill was enacted and both will be held over for consideration in the 1992 legislative session.

The next question you raise involves comparing the job duties of the county treasurer, county clerk and register of deeds and determine which office has the most duties and responsibilities. This question is outside the scope of what the Attorney General's office is authorized to answer.

You also inquire as to whether the board of county commissioners can set the county treasurer's salary based on the amount that official will receive from the state pursuant to K.S.A. 1990 Supp. 8-145.

K.S.A. 1990 Supp. 8-145 establishes that the county treasurer shall deposit \$.75 of each license application, \$.75 out of each application for transfer of license plate, and \$2.00 out of each application for a certificate of title in a special fund the total amount not to exceed "\$9,800 additional annual compensation." This amount is to assist in "paying for necessary help and expenses . . . and extra compensation to the county treasurer. . . which compensation will be in addition to any other compensation provided by any other law. . . ." K.S.A. 1990 Supp. 8-145. (Emphasis added).

K.S.A. 1990 Supp. 8-145 denotes that the amount collected is "extra compensation" for the county treasurer. However, that does not automatically mean that the treasurer's salary must remain the same as in previous years, but only that the state money will be given to county treasurers as extra compensation.

Based on the minutes of December 18, 1990, regarding Resolution No. 90-228, and the resolution itself, Shawnee county board of commissioners obviously took the amount of compensation that the county treasurer would receive from the state into account when setting the county treasurer's salary. This violates the intent of the legislature, who when enacting and amending this statute, spoke about the increased duties of the treasurer's office and the need to assist counties in paying for services that aid the state. Therefore, although the board of county commissioners have budgetary powers and are able to establish the county treasurer's salary, they must make such decisions based on reasonable grounds such as the availability of funds, the need for certain services, and the duties and responsibilities of the official. They cannot violate the legislative intent of K.S.A. 1990 Supp. 8-145 by setting the annual amount of the county treasurer's salary so that the total is contingent on the amount the official receives from the state, when the

intent of the legislature was that this amount be extra compensation.

In conclusion, in the future the Kansas legislature may restrict the current authority of the county commissioners regarding the determination of the wages of elected county officers through the bills listed above or other laws. Until such time, absent any arbitrary or unreasonable actions on the part of the board of county commissioners, the board has the authority to decrease the amount of the county treasurer's salary. However, the money received pursuant to K.S.A. 1990 Supp. 8-145 (up to \$9,800) cannot be withheld from the county treasurer by the county commissioners, nor can they set the county treasurer's annual salary contingent on the amount the treasurer will receive from the state pursuant to this statute.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann
Assistant Attorney General

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