February 17, 1992

ATTORNEY GENERAL OPINION NO. 92-25

The Honorable Bill Brady  
State Senator, Fourteenth District  
State Capitol, Room 462-E  
Topeka, Kansas 66612

Re: 
Elections--Presidential Preference Primary  
Election--Presidential Preference Primary Election;  
Payment of Election Expenses

Synopsis: No legal action may be undertaken to force an appropriation of state money for the purpose of reimbursing counties for costs incurred by the counties in conducting the presidential preference primary election. Cited herein: K.S.A. 25-4508; Kan. Const., art. 2, § 24.

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Dear Senator Brady:

As senator for the fourteenth district, you request our opinion regarding whether K.S.A. 25-4508 obligates the state to pay for the costs of conducting the presidential preference primary election scheduled for April of 1992. Specifically, you ask whether the legislature may be forced to appropriate state money for the purpose of reimbursing counties for the costs incurred by the counties in conducting the presidential preference primary election.

The power to appropriate the money of the state is a legislative power and, except as is restricted by section 24 of article 2 of the Kansas constitution, the legislature has the exclusive power to decide how, when and for what purposes
the public funds shall be applied in carrying on the state
government. State ex rel. v. Fadely, 180 Kan. 652, 660-61 (1957). "No money shall be drawn from the treasury
except in pursuance of a specific appropriation made by law." Kan. Const., art. 2, § 24. Therefore, in order for the
state to expend money for the purpose of reimbursing counties
for costs incurred by the counties in conducting the
presidential preference primary election, the legislature must
make an appropriation for such purpose.

If the legislature refuses or fails to make an appropriation
for the purpose of reimbursing counties, there appears to be
little action that may be undertaken by the counties to force
an appropriation. Mandamus cannot be utilized to require the
state treasurer to violate the provisions of article 2,
section 24 of the Kansas constitution. Wheat v. Finney, 230
Kan. 217, 222 (1981). No legal action may be undertaken to
force an appropriation of state money for the purpose of
reimbursing counties for costs incurred by the counties in
conducting the presidential preference primary election.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm