

STATE OF KANSAS

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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.

* * *

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