



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

April 28, 1992

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ATTORNEY GENERAL OPINION NO. 92- 58

David Heger
County Counselor
P.O. Box 403
133 S. Pearl
Paola, Kansas 66071

Re: Elections--Primary Elections--Fees of Candidates;
Reimbursement

Synopsis: A county election officer may not reimburse to an individual whose candidacy has been terminated pursuant to K.S.A. 19-826 the fee paid pursuant to K.S.A. 1991 Supp. 25-206. Cited herein: K.S.A. 19-801b; 19-826; K.S.A. 1991 Supp. 25-206; 25-208.

* * *

Dear Mr. Heger:

As counselor for the board of county commissioners of Miami county, you request our opinion regarding whether the filing fee paid by a candidate for county sheriff may be reimbursed when it has been determined that the candidate is not qualified to serve as sheriff.

An individual has filed in the office of the county election officer a declaration of intention to become a candidate for sheriff and has paid the filing fee as required by K.S.A. 1991 Supp. 25-206. As required by K.S.A. 19-826, the candidate was fingerprinted. A search by the Kansas bureau of investigation of the state and national fingerprint files indicated that the candidate had been convicted of driving while under the influence of alcohol or drugs and an open container of liquor

offense, and therefore does not meet the qualifications for office prescribed in K.S.A. 19-801b. Chamberlain v. Buhrman, No. 66,858 (Kansas January 17, 1992). The county election officer then terminated the individual's candidacy and removed the individual's name from the ballot as mandated by K.S.A. 19-826. The individual now seeks reimbursement of the filing fee paid pursuant to K.S.A. 1991 Supp. 25-206.

A declaration of an intention to become a candidate for county sheriff is to be filed in the office of the county election officer. K.S.A. 1991 Supp. 25-208. The declaration is to be accompanied by a fee equal to one percent of one year's salary of the sheriff. K.S.A. 1991 Supp. 25-206.

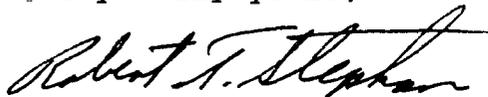
"The officer receiving the funds shall turn them over to the state treasurer, if deposited with the secretary of state, or to the county treasurer, if deposited with the county election officer, and the funds shall become a part of the general fund of the respective government." Id.

The interpretation of a statute is a matter of law and it is the function of the court to interpret a statute to give it the effect intended by the legislature. Brabander v. Western Cooperative Electric, 248 Kan. 914, 917 (1991). The fundamental rule of statutory construction is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute. Id. at 916. One of the common rules of statutory interpretation is that the mention or inclusion of one thing implies the exclusion of others. State v. Wood, 231 Kan. 699, 701 (1982). When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. State v. Coley, 236 Kan. 672, 675 (1985).

K.S.A. 1991 Supp. 25-206 clearly provides that the fees submitted to the county election officer are to be turned over to the county treasurer. The county election officer has no authority to transfer the fees to any other individuals. The fees become part of the general fund of the county. K.S.A. 1991 Supp. 25-206. Therefore, the county election officer may not reimburse to an individual whose candidacy has

been terminated pursuant to K.S.A. 19-826 the fee paid pursuant to K.S.A. 1991 Supp. 25-206.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm