



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 88

Chris Biggs
Geary County Attorney
Courthouse
Junction City, KS 66441

Re: Procedure, Civil -- Process -- Summons; Private
Process Server

Fees and Salaries -- Fees in All Counties and
Salaries in Certain Counties -- Allowable Fees for
a Private Process Server

Synopsis: Since the language of the statutes do not allow for
an increase in the allowable fees for private
process servers and because the county's home rule
powers (K.S.A. 19-101) would not be applicable in
this instance, it is this office's opinion that the
county cannot compensate private process servers in
an amount in excess of that which is set out in
K.S.A. 1991 Supp. 28-110. Cited herein: K.S.A.
1991 Supp. 28-110; 60-303(3).

* * *

Dear Mr. Biggs:

As Geary county attorney you request our opinion as to
whether a private process server who was appointed by the
court pursuant to K.S.A. 1991 Supp. 60-303(3) would be limited
to the fees set out in K.S.A. 1991 Supp. 28-110 or if the
county would be able to contract with an individual for the

service at a rate in excess of the fees listed in K.S.A. 1991 Supp. 28-110.

The relevant part of K.S.A. 1991 Supp. 60-303(3) states:

"A process server or an authorized attorney may make the service anywhere in or out of the state and shall be allowed the fees prescribed in K.S.A. 1991 Supp. 28-110 and amendments thereto, for the sheriff."

Based on the fact that the statute does not have any language which gives any leeway regarding the amount of fees to be paid to process servers, we must follow the general rule that "when a statute is plain and unambiguous the court must give effect to the intention of the legislation as expressed, rather than determine what the law should or should not be." State v. Coley, 236 Kan. 672, 675 (1985); Randall v. Seeman, 228 Kan. 395 (1980).

Therefore, since the language of the statutes (K.S.A. 1991 Supp. 28-110 and 60-303(3)) do not allow for an increase in the allowable fees for private process servers and because the county's home rule powers (K.S.A. 19-101) would not be applicable in this instance, it is this office's opinion that the county cannot compensate private process servers in an amount in excess of that which is set out in K.S.A. 1991 Supp. 28-110.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma
Assistant Attorney General

RTS:JLM:MJS:bas