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ATTORNEY GENERAL OPINION NO. 2013-3

Charles F. Moser, Unified Attorney
Unified Government of Greeley County
113 W. Greeley Ave., P.O. Box 429
Tribune, KS 67879

Re: Cities and Municipalities—Consolidation of Municipalities—Unification of Governmental Units in Greeley County; Unification Plan; Unified City-County Powers, Duties, Limitations

Counties and County Officers—County Clerk—County Clerk; Deputies and Assistants; Budget; Limitation on Personnel Policies and Practices

Counties and County Officers—County Treasurer—County Treasurer; Deputy Treasurers; Budget; Limitation of Personnel Action

Counties and County Officers—Sheriff—Sheriff; Deputies and Undersheriffs; Budget; Limitation of Personnel Action

Counties and County Officers—Register of Deeds—Register of Deeds; Deputy Registers of Deed; Budget; Limitation of Personnel Action

Synopsis: The authority of county elected officials to pay bonuses to their employees is subject to any county-wide pay plan adopted by the board of county commissioners. When a pay plan establishes specific salaries for county employees and is silent on the issue of bonuses, the pay plan should generally be read as prohibiting bonuses.

County elected officials whose salaries are set by the board of county commissioners may not pay themselves bonuses without the board's approval. Cited herein: K.S.A. 2011 Supp. 12-365; 19-101a; K.S.A. 19-302; 19-503; 19-805; 19-1202; 79-2934.

* * *

Dear Mr. Moser:

As the County Attorney and County Counselor for the Unified Government of Greeley County, you ask whether the Sheriff, Register of Deeds, County Clerk, and County Treasurer of the Unified Government of Greeley County may use excess funds within their budgets to pay bonuses to their employees or themselves. As background, you note that the Board of Supervisors for the Unified Government of Greeley County appropriates a lump sum for the salaries of all personnel, including the elected official, within each of these offices. The Board also sets the salaries of the county's elected officials and has established a pay plan for all non-elected county employees. The Board has not, however, specifically authorized these officials to pay bonuses or explicitly forbidden them from doing so.

Before answering your specific questions, we will first review the relationship between boards of county commissioners and county elected officials. Under Kansas' home rule statutes, the board of county commissioners in each county has the authority to "transact all county business and perform all powers of local legislation and administration it deems appropriate," subject to certain enumerated restrictions not directly relevant here.¹ These statutes have been interpreted as granting a board "general authority over [the] county purse," including authority to set the budgets and salaries of county elected officials.² Due to the unification of the governments of Greeley County and the City of Tribune,³ the Unified Government of Greeley County is governed by a board of supervisors rather than a board of commissioners, but the board of supervisors has the same powers.⁴

Kansas statutes also create several elected offices within each county, including the offices of Sheriff, County Clerk, County Treasurer, and Register of Deeds. Despite its unification, the Unified Government of Greeley County has retained these same officials.⁵ The Sheriff, County Clerk, County Treasurer, and Register of Deeds may "appoint, promote, demote and dismiss" deputies and assistants as "necessary to carry out the duties of the office."⁶

¹ K.S.A. 2011 Supp. 19-101a.

² *Bd. of County Comm'rs of County of Lincoln v. Nielander*, 275 Kan. 257, 267 (2003); Attorney General Opinion No. 91-65.

³ The Unified Government of Greeley County was established following the procedure set forth in K.S.A. 2011 Supp. 12-360 *et seq.* It is both a county and a city of the third class. See K.S.A. 2011 Supp. 12-365.

⁴ K.S.A. 2011 Supp. 12-365(k); Final Plan for the Unification of the Governments of Greeley County and Tribune Kansas (August 22, 2007).

⁵ You inform us that a few of the county elected officials assumed additional responsibilities formerly performed by city officials. Because nothing in the unification plan purports to alter the statutory duties and powers of these officials, however, this does not affect our analysis. See *id.*

⁶ K.S.A. 19-302(a) (county clerk); K.S.A. 19-503(a) (county treasurer); K.S.A. 19-805(a) (sheriff); K.S.A. 19-1202(a) (register of deeds).

At the same time, Kansas statutes also establish certain limitations on a county elected official's personnel decisions. Although different statutes apply to the various officials, each of these statutes provides:

Any personnel action taken by [the elected official] shall be subject to the following: (1) Personnel policies and procedures established by the board of county commissioners for all county employees other than elected officials; (2) any pay plan established by the board of county commissioners for all county employees other than elected officials; (3) any applicable collective bargaining agreements or civil service system; and (4) the budget for the financing of the operation of the [official's] office as approved by the board of county commissioners.⁷

The Kansas Supreme Court considered the interaction between these various statutes in *Board of County Commissioners of County of Lincoln v. Nielander*,⁸ a case in which the Lincoln County Sheriff disputed the Lincoln County Commissioners' authority to fire a deputy sheriff.⁹ On appeal, the Kansas Supreme Court recognized that while personnel action taken by a county elected official is subject to the personnel policies, pay plans, collective bargaining agreements or civil service system, and budget set by county commissioners, these restrictions do "not give county commissioners the ability to supersede a sheriff's power to appoint, promote, demote, or dismiss his or her personnel."¹⁰ Accordingly, the Court held that the Lincoln County Commissioners lacked legal authority to fire the deputy sheriff.¹¹

The facts in *Nielander* differ materially from those specified in your opinion request. There, the county commissioners attempted to fire a sheriff's deputy when the statute at issue gave the sheriff the authority to "appoint, promote, demote, and dismiss" employees. Here, your question is whether county elected officials may pay bonuses to their employees or themselves. Paying bonuses does not relate to an elected official's authority to "appoint, promote, demote and dismiss" employees but is instead, by the terms of the relevant statutes, subject to any pay plan and budget adopted by the board of county commissioners.

With this background, we turn now to your specific questions.

1. *Does an elected official have the authority to pay out unused, appropriated funds in that official's budget as bonuses to his/her deputies and staff?*

⁷ K.S.A. 19-302(c); K.S.A. 19-503(c); K.S.A. 19-805(d); K.S.A. 19-1202(c).

⁸ 275 Kan. 257 (2003).

⁹ *Id.* at 259-60. The Court also addressed a second issue: whether the commissioners could require the sheriff to obtain prior approval for purchases in excess of \$250. See *id.* at 268-69. The Court's holding on that issue is not directly relevant here — while no statute explicitly provides that county elected officials' purchases are subject to the county commissioners' purchasing policies, the statutes cited above do provide that county elected officials' personnel actions are subject to the pay plan and budget adopted by the county commissioners.

¹⁰ *Id.* at 266-67.

¹¹ *Id.* at 267.

Yes, subject to the four limitations listed above. In Attorney General Opinion No. 1984-30, Attorney General Stephan opined that:

In the absence of [] personnel policies, pay plans, civil service regulations, or collective bargaining agreements a sheriff may determine and adjust the salaries of his or her deputies (including the undersheriff) or assistants subject only to the limits of the budget for the financing and operation of the sheriff's office approved by the county commissioners.¹²

The relevant statutory text has not changed since Opinion No. 1984-30 was issued, and we see no reason based on intervening case law or otherwise to revisit its conclusion on this issue. Of course, Opinion No. 1984-30 does not explicitly mention bonuses. It does, however, discuss an official's authority to "adjust the salaries" of employees, and as Attorney General Opinion No. 1977-55 observed, "the payment of a bonus . . . is analogous, if not directly tantamount, to increased compensation."¹³

2. *Does it matter whether these unused funds were appropriated to the Major Service Area of "salaries" or some other Major Service Area?*

Yes. Among other limitations, a county elected official's authority to pay bonuses is subject to the budget approved by the board of county commissioners or, in this case, board of supervisors. An official may not pay bonuses from money appropriated for some other purpose or if doing so would exceed the official's overall budget. The cash-basis and budget laws of the state further support this conclusion.¹⁴

3. *If the Board of Supervisors has established a pay plan for all non-elected personnel would the elected official's action of paying unused budgeted funds out as bonuses violate K.S.A. 19-302(c), K.S.A. 19-503(c), K.S.A. 19-805(d), or K.S.A. 19-1202(c), as they may apply to the respective elected official?*

The answer to this question depends on the details of the pay plan. Under the plain language of K.S.A. 19-302(c), K.S.A. 19-503(c), K.S.A. 19-805(d), and K.S.A. 19-1202(c), a county elected official's authority to pay bonuses is subject to any pay plan adopted by the board of county commissioners for all non-elected county employees. When such a pay plan specifically authorizes or forbids bonuses, determining whether bonuses are allowed will be straightforward. But in many cases, as in yours, a pay plan

¹² Attorney General Opinion No. 84-30.

¹³ Attorney General Opinion No. 77-55.

¹⁴ See K.S.A. 79-2934 ("The budget as approved . . . shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose. No money in any fund shall be used to pay for any indebtedness created in excess of the total amount of the adopted budget of expenditures for such fund."). K.S.A. 2011 Supp. 12-365(b) specifies that the Unified Government of Greeley County remains subject to these laws, despite its unification.

will be silent on the matter of bonuses. Although we will not address the details of any particular plan,¹⁵ we offer the following opinion as guidance.

When a pay plan in one way or another establishes specific salaries for an elected official's employees and is silent on the issue of bonuses, we opine that paying bonuses will generally be inconsistent with the pay plan, absent some provision in the pay plan suggesting otherwise. In reaching this conclusion, we rely on the *expressio unius* canon, which provides that "the mention of one thing indicates an exclusion of other things not mentioned."¹⁶ As applied here, the canon dictates that when a pay plan authorizes a particular level of compensation for an employee, the plan should ordinarily be read as excluding any additional compensation not specifically authorized. And bonuses paid from a salary account are allowable only to the extent they are compensation; otherwise the payment of such bonuses would conflict with the budget approved by the board.

4. *Does an elected official have the authority to pay out unused, appropriated funds in that official's budget as a bonus to himself/herself?*

Not without the approval of the board of county commissioners (or in this case, board of supervisors). The salaries of county elected officials were once fixed by the legislature.¹⁷ With the enactment of the county home rule statutes in 1974, this legislative function passed to the boards of county commissioners.¹⁸ You advise us that the Unified Government of Greeley County Board of Supervisors has, in fact, set the salaries for Unified Government of Greeley County's elected officials. Because fixing the salaries of county elected officials is a legislative function entrusted to the board of county commissioners (or board of supervisors), we believe these officials cannot, without the board's approval, increase their compensation by paying themselves bonuses.

Additionally, the fact that a board has appropriated a lump sum for salaries, including the salary of the elected officials, does not mean that the board has authorized these officials to pay themselves bonuses. This conclusion is based on the *expressio unius* canon discussed above. Since the board set particular salaries for the elected officials, we should generally presume that the board did not intend for these officials to increase their compensation by paying themselves bonuses.

Given that the practice of county officials paying themselves bonuses usurps the board's legislative authority, we need not (and do not) opine on whether paying such bonuses would violate any other law or ethics rule.

¹⁵ Attorney General's Statement of Policy Relating to the Furnishing of Written Opinions, ¶ 8 ("Only questions of law will be answered").

¹⁶ *Metro. Life Ins. Co. v. Strnad*, 255 Kan. 657, 661-62 (1994) (the *expressio unius* canon is not limited to statutory interpretation).

¹⁷ See, e.g., L. 1974, Ch. 361 (setting the salaries of county clerks, county treasurers, sheriffs, and registers of deeds, among others); see also Attorney General Opinion No. 85-147.

¹⁸ *Id.*

Sincerely,

Derek Schmidt
Attorney General

Dwight Carswell
Assistant Attorney General

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