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January 21, 2015

ATTORNEY GENERAL OPINION NO. 2015- 2

Roger Marrs
Deputy County Counselor
County of Leavenworth
300 Walnut, Suite 225
Leavenworth, KS 66048-2815

Re: Automobiles and Other Vehicles—General Provisions—Collection of Fees; Disposition of Moneys; Compensation of County Treasurers; Control and Use of Collected Fees; Compensation for State and County Duties

Counties and County Officers—County Treasurer—Deputy Treasurers, Duties; Compensation for State and County Duties

Synopsis: A county treasurer has the legal authority pursuant to K.S.A. 2014 Supp. 8-145(b) to fund employee positions exclusively or partially working on statutorily imposed state duties without complying with a county commission's pay plan. To the extent an employee performs state duties, that employee is not subject to the county pay plan. A county treasurer, however, should determine the percentage of time a specific employee devotes to county and state duties, and then calculate salaries based on that percentage.

If a county treasurer fails to withdraw the balance and credit that balance to the county's general fund pursuant to K.S.A. 2014 Supp. 8-145(b), a county commission may not do so itself but may pursue other legal recourse against the county treasurer. Cited herein: K.S.A. 2008 Supp. 8-145; K.S.A. 2014 Supp. 8-145(b); K.S.A. 2014 Supp. 19-101a; K.S.A. 19-503(a); K.S.A. 19-503(c).

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Dear Mr. Marrs:

As Deputy County Counselor for Leavenworth County¹, you request our opinion on a variety of issues related to the interaction between K.S.A. 2014 Supp. 8-145(b) and K.S.A. 19-503(c).

As background, you note that the Board of County Commissioners of Leavenworth County (Board) approved a reorganization plan submitted by the Leavenworth County Treasurer (Treasurer). The reorganization plan required staff employed by the Treasurer to perform duties related to both the Treasurer's statutorily imposed county and state duties. The funding source for all but one of these employees is the special fund authorized by K.S.A. 2014 Supp. 8-145(b) related to the registration and titling of vehicles. As part of the Board's approval, the Board understood that the Treasurer had exclusive administrative control over the expenditure of fees collected pursuant to K.S.A. 2014 Supp. 8-145(b). The Board and Treasurer now disagree as to whether K.S.A. 2014 Supp. 8-145(b) or K.S.A. 19-503(c) governs personnel actions for the Treasurer's staff that perform both county and state duties.

Before answering your specific questions, we will first review the relationship between boards of county commissioners and county treasurers. 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.² These statutes have been interpreted as granting a board "general authority over [the] county purse," including authority to set the budgets, salaries and any bonuses of county elected officials.³ Kansas statutes also create several elected offices within each county, including the office of county treasurer, the powers and duties of such offices established by statute.

The powers and duties of county treasurers include county duties and state duties. A county treasurer's county duties "include receiving and disbursing money, maintaining an account of receipts and expenditures, preparing financial reports, paying and redeeming county warrants, and collecting taxes."⁴

A county treasurer's state duties include "processing motor vehicle registrations and certificates of title and transferring the proceeds received from fees charged for such registration."⁵ The county treasurer deposits a statutorily established amount from each license application, application for transfer of a license plate and application for a certificate of title into a special fund. Under K.S.A. 2014 Supp. 8-145(b), this fund is "for

¹ The County Counselor for Leavenworth County has a conflict of interest.

² K.S.A. 2014 Supp. 19-101a.

³ *Bd. of Lincoln County Comm'rs v. Nielander*, 275 Kan. 257, 267 (2003); Attorney General Opinion No. 13-3; Attorney General Opinion No. 91-65.

⁴ *Weber v. Board of Marshall County Comm'rs*, 289 Kan. 1166, 1177 (2009); See K.S.A. 19-501 *et seq.*

⁵ *Id.*

the use of the county treasurer in paying for necessary help and expenses incidental to the administration of duties in accordance with the provisions of this law”⁶ This statute does not have any provisions authorizing a county treasurer to take any personnel actions except to pay for help and expenses.

K.S.A. 19-503(c) provides a county treasurer with the authority to take personnel actions including to “appoint, promote, demote and dismiss additional deputies and assistants as necessary to carry out the duties of the office.”⁷ At the same time, Kansas statutes also establish certain limitations on a county treasurer’s personnel decisions.

Any personnel action taken by the county treasurer under this section 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.⁸

The Kansas Supreme Court considered the interaction between similar statutes in *Board of Lincoln County Comm’rs v. Nielander*,⁹ a case in which the Lincoln County Sheriff disputed the Lincoln County Commissioners’ authority to fire a deputy sheriff.¹⁰ 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.”¹¹ Accordingly, the Court held that the Lincoln County Commissioners lacked legal authority to fire the deputy sheriff.¹²

The Kansas Supreme Court addressed who controls disbursements from the special fund in *Weber v. Board of Marshall County Comm’rs*.¹³ In *Weber*, the Court held that K.S.A. 2008 Supp. 8-145 “gives the Board no interest in the motor vehicle fund whatsoever, except a contingent interest at the end of a calendar year” There is nothing in the statute giving the Board any authority to approve, reject, or modify motor vehicle fund expenditures.”¹⁴

⁶ K.S.A. 2014 Supp. 8-145(b).

⁷ K.S.A. 19-503(a).

⁸ K.S.A. 19-503(c).

⁹ 275 Kan 257.

¹⁰ *Id.* at 259-60.

¹¹ *Id.* at 266-67.

¹² *Id.* at 267.

¹³ Affirming *Wyandotte County Comm’rs v. Ferguson*, 159 Kan. 80 (1944).

¹⁴ *Weber*, 289 Kan. at 1179.

With this background, we turn now to your first six questions:

1. *Are personnel actions related to positions funded exclusively by K.S.A. [2014 Supp.] 8-145(b) fees for employees who exclusively perform state duties subject to K.S.A. 19-503(c)?*
2. *If an employee of the treasurer is exclusively funded by K.S.A. [2014 Supp.] 8-145(b) fees, but performs both state and county duties, are personnel actions related to such employee subject to K.S.A. 19-503(c)?*
3. *Are personnel actions related to an employee who performs both county and state duties, and whose salary is funded by both county funds and K.S.A. [2014 Supp.] 8-145(b) fees, outside the scope of K.S.A. 19-503(c), partially within the scope of K.S.A. 19-503(c), or wholly subject to K.S.A. 19-503(c)?*
4. *If an employee of the treasurer performs both state and county duties, is the treasurer required to determine how much of the employee's time is allocated to county duties vs. state duties and then fund such employee's salary from both county funds and K.S.A. [2014 Supp.] 8-145(b) fees accordingly?*
5. *Absent a determination as to the amount of time allocated to county duties, does the county have any responsibility or authority to augment the treasurer's K.S.A. [2014 Supp.] 8-145(b) fund when employees of the treasurer perform both county and state duties?*
6. *Does the answer to any of the above questions change if the percentage of an employee's time spent on county duties is de minimis or insignificant?*

We will address your first six questions together because they are interrelated.

We do not believe that K.S.A. 2014 Supp. 8-145(b) and K.S.A. 19-503(c) are in conflict. A county treasurer clearly has the authority to employ staff to perform duties related to both the treasurer's statutorily imposed county and state duties. In addition, a county treasurer clearly has the legal authority to utilize the special fund to support the work of a county treasurer's state duties, and a county commission has no legal authority to approve, reject or modify a county treasurer's expenditures from this fund. K.S.A. 2014 Supp. 8-145(b) specifically addresses funding while K.S.A. 19-503(c) specifically addresses personnel actions including pay plans. K.S.A. 2014 Supp. 8-145(b) is the more specific statute and governs expenditures from the special fund.¹⁵

¹⁵ See *In re Mental Health Ass'n of Heartland*, 289 Kan. 1209, 1215 (2009) (when two statutes are in conflict, the specific statute controls over a general statute).

In the factual scenario presented in this case, we believe that K.S.A. 2014 Supp. 8-145(b) controls over K.S.A. 19-503(c) regarding pay plans for employees partially or exclusively working on state duties. In essence, the Treasurer must comply with the Board's established personnel policies, collective bargaining agreements or a civil service system, if any, for all Treasurer employees. However, the Treasurer has the legal authority pursuant to K.S.A. 2014 Supp. 8-145(b) to fund employee positions exclusively or partially working on state duties with funds from the special fund without complying with the Board's pay plan.

The question then arises on the allocation of funds to pay salary and benefits for employees who perform both county and state duties. A county treasurer has complete authority to fix the salaries of the employees required to fulfill state duties while the county commission has the authority to fix the salaries of the employees who fulfill county related duties pursuant to a pay plan. To the extent an employee performs state duties, that employee is not subject to the county pay plan. Therefore, in this case, the Treasurer should determine the percentage of time a specific employee devotes to county and state duties, then calculate salaries based on that percentage.

Many different methods for allocating an employee's time exist. We do not intend to recommend any particular method to the Treasurer but leave that decision to the discretion of the Treasurer.

We next address your two remaining questions:

7. Can the treasurer retain any portion of the funds that are required to be transferred to the county general fund beyond the statutory deadline, or does such retention constitute an impermissible co-mingling of county funds with K.S.A. [2014 Supp.] 8-145(b) funds?

8. If the treasurer retains any portion of the funds beyond the statutory deadline, does the Board have authority to withdraw the retained portion from the treasurer's K.S.A. 2014 Supp. 8-145(b) fund and credit said funds to the county general fund, or is such authority vested solely in the treasurer?

As part of a county treasurer's duties, a county treasurer deposits a statutorily established amount from each license application, application for transfer of a license plate and application for a certificate of title into a special fund. "Any balance remaining in such fund at the end of the close of any calendar year shall be withdrawn and credited to the general fund of the county prior to June 1 of the following calendar year."¹⁶

¹⁶ K.S.A. 2014 Supp. 8-145(b).

K.S.A. 2014 Supp. 8-145(b) does not specify who must withdraw the balance and credit that balance to the county's general fund. However, as the *Weber* court discussed, a county treasurer is the only county official with statutory authority over the fund. A county commission has no legal authority pursuant to K.S.A. 2014 Supp. 8-145 to take any action regarding the special fund.¹⁷ Therefore, the Treasurer, not the Board, has the authority to withdraw the balance of the special fund.

If a county treasurer fails to do so, we found no statutory authority expressly allowing a county commission to withdraw funds from the special fund. However, other legal recourse may be available to the county commission to force a county treasurer's compliance with K.S.A. 2014 Supp. 8-145.

Sincerely,

Derek Schmidt
Attorney General

Cheryl L. Whelan
Assistant Attorney General

DS:AA:CW:sb

¹⁷ *Weber*, 289 Kan. at 1178-80.