

FILE

Subject

*East Seward
County Office - Court
to Judge*



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

January 16, 1974

Opinion No. 74- 16

Robert G. Frey
Seward County Attorney
415 N. Washington
Liberal, Kansas 67901

Dear Mr. Frey:

You advise that in 1973, approximately 2,450 cases were filed in the county court of Seward County. The county has a population of less than 20,000. You inquire concerning the computation of the salary of the county judge under section 59, ch. 175, L. 1973, found at K.S.A. 1973 Supp. 28-806.

This section provides in pertinent part thus:

"The judge of the county court shall receive an annual salary for his services as county judge which compensation shall be in addition to his salary as probate judge and shall be computed as follows:

(a) In county courts in which less than two hundred fifty (250) cases were filed the preceding year, the judge shall receive an equivalent of twenty-five percent (25%) of his salary as probate judge.

(b) For each two hundred fifty (250) cases or fraction thereof, filed during the preceding year, in excess of the first two hundred fifty cases, the judge shall receive an equivalent of five percent (5%) of his salary as probate judge."

Subparagraphs (a) and (b) are set forth as alternative provisions, each having application to a class of county courts exclusive of that to which the other subsection applies. Thus, the provision for salary computation set forth in (a) applies only to those "county courts in which less than two hundred fifty (250) cases

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were filed the preceding year." Thus, subsection (b) applies to all those county courts in which 250 or more cases were filed.

The language does not, surely reflect what must have been the intention of the Legislature. It is, however, the language, and not the unexpressed intention which must control. Subsection (a) is clear on its face. Subsection (b) is less so in specifying the courts to which it applies. However, given the clarity of (a) in its application only to courts in which less than 250 cases are filed, (b) can only be construed to apply to all other courts.

Senate Bill No. 680 has been proposed to be acted upon during the current session of the Legislature to clarify this section. I enclose a copy for your information.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm
Enc.

cc: Senator Elwaine Pomeroy
Arden Ensley