

FILE



STATE OF KANSAS

Office of the Attorney General

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

Subject fees & salaries -
 County Officers - General
to _____

VERN MILLER
Attorney General

June 10, 1974

Opinion No. 74- 189

Kenneth R. Heer
Kingman County Attorney
103 Avenue A East
Kingman, Kansas 67068

Dear Mr. Heer:

You advise that a federal reservoir, Cheney, lies partly in Kingman, Reno and Sedgwick counties. As it pertains to your own salary, section 36 of 1974 House Bill 2054 amends K.S.A. 28-816 in pertinent part thus:

"In any county in which there is located an active military establishment or federal reservoir which results in added duties," [Underscored language added by amendment.]

specified increases are authorized to be granted. In addition, section 37 amended K.S.A. 28-817 in pertinent part thus:

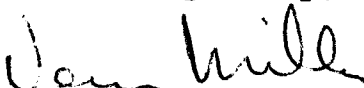
"In any county in which there is located an active military establishment, federal reservoir or state institution of higher education which results in added duties for the county clerk and county treasurer, the board of county commissioners shall by resolution fix and allow additional compensation in an amount equal to not less than ten percent (10%) nor more than twenty percent (20%) of the annual salary hereinbefore prescribed"

The question posed is whether the county attorney, county clerk and county treasurer are entitled to the applicable increments in compensation under these provisions, assuming added duties result from the presence of a portion of Cheney Reservoir, or whether it is necessary, in order that these officers qualify for such increases, that the reservoir be located wholly in the county.

Kenneth R. Heer
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I enclose a copy of opinion no. 74-109, dealing with an analogous question. The purpose of these provisions, of course, is to authorize the payment of additional compensation to certain county officers when the presence of certain classes of establishments, such as a military installation or federal reservoir, results in added duties. The statute is not specific, as to whether all or only a part thereof need lie in the county in order to entitle its officers to the authorized increases. The statute should not be given a strained and restrictive construction which would frustrate the manifest object and purpose of the legislature. Added duties may result to these officers as much and as burdensomely from the presence of a part of the reservoir, as well as from all of it. In our view, if all or any part of a reservoir, as defined in the enclosed opinion, lies within the boundaries of a county, and it results in added duties to the officers in question, the authorization for increased compensation becomes applicable.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

Enc: Opinion No. 74-109

STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

March 29, 1974

Opinion No. 74- 109

William A. Taylor, III
Cowley County Counselor
P.O. Box 731
Winfield, Kansas 67156

Dear Mr. Taylor:

K.S.A. 28-818 authorizes the board of county commissioners to fix and allow additional compensation for the register of deeds in any county in which there is located a "federal reservoir which results in added duties for the register of deeds."

You advise that there is currently under construction in the State of Oklahoma a federal reservoir designated as the Kaw Dam. The United States government has secured a number of flowage easements in the form of quit claim deeds from landowners in southern Cowley County. However, the lake at normal times will not flow into Cowley County, and it is anticipated that only at times of extremely high water will the reservoir back into the State of Kansas. While for a period of time there was additional work for the register of deeds in filing these deeds, they are now all filed, and it is anticipated that there will be no further recordation regarding the Kaw Reservoir project.

We agree with you that the apparent intent of the statute was to provide additional compensation for the register of deeds in those counties in which a reservoir was located, and in which it could be anticipated that as a result thereof, and due to development around the reservoir, the work of the register of deeds in filing and recording land transactions would substantially increase. You suggest that, in accordance with this legislative intent, the term "federal reservoir" should be construed to mean only the actual body of water constituting the reservoir in existence on a permanent basis, and should not be construed to mean merely an area in which flowage easements are secured, and which at best would hold only temporary bodies of water, which for all practical purposes would not offer any development possibilities.

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Precisely what constitutes a "reservoir" is not clear. In State ex rel. Bliss v. Dority, 225 P.2d 1007 (N.M. 19___), the court stated that a reservoir is a place where water is collected and kept for use when wanted. Thus defined, the term should be construed to include any portion of the storage area which is available for flowage and storage, even though it may be used only infrequently and in instances of extraordinarily high water. Flowage areas, such as here in question, would thus constitute a part of the "reservoir."

Having concluded this, however, the issue is not resolved. The statute requires, in order to authorize the allowance of additional compensation, not only the presence of a federal reservoir, but one "which results in added duties for the register of deeds." From the facts stated in your letter, there being no development around the flowage areas resulting in added real estate transactions and recordation and registry responsibilities, and the filing of the easements and deeds for the flowage area itself having been completed, it does not appear that the presence of the flowage areas, a part of the reservoir, results in added duties for the register of deeds, and on this basis, no additional compensation is authorized. This determination, i.e., whether there are "added duties," rests ultimately with the board of county commissioners. From the facts stated in your letter, it appears questionable whether there exists a basis for additional compensation.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jam