



STATE OF KANSAS

*Office of the Attorney General*

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

CURT T. SCHNEIDER  
Attorney General

January 20, 1975

Opinion 75- 15

Mr. Douglas S. Brunson  
Kiowa County Attorney  
Greensburg, Kansas 67054

Dear Mr. Brunson:

You advise that on December 11, 1974, the duly elected sheriff of Kiowa County was deceased. The duly appointed undersheriff has since that time, pursuant to K.S.A. 19-804, executed the duties of the office. No appointment to fill the vacancy was made, as of the date of your letter under date of January 3, 1975. You advise that the undersheriff has refused to accept his salary check unless it is in the amount to which the sheriff is entitled by law to receive.

You inquire whether the undersheriff, while discharging the duties of the office of sheriff pursuant to K.S.A. 19-804, is entitled to the salary and compensation provided by law for the sheriff. We concur with your opinion that he is not so entitled.

K.S.A. 19-804 provides in pertinent part thus:

"[W]henver a vacancy occurs in the office of sheriff of any county, the undersheriff of such county shall in all things execute the office of sheriff until a sheriff shall be appointed by the governor, who shall hold his office during the unexpired term for which he is appointed . . . ; and any default or misfeasance in office of undersheriff in the meantime, as well as before such vacancy, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the condition of the bond executed by such undersheriff . . . ."

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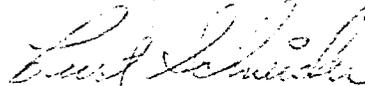
This provision clearly provides that upon the occurrence of a vacancy in the office of sheriff, and until that vacancy is filled as provided by law, the undersheriff shall execute the duties of the office. Notwithstanding he is responsible for discharging all the duties of the office, the office itself remains vacant until filled by appointment by the governor. The undersheriff does not assume the office itself, but only becomes responsible for the proper discharge of the duties thereof. The applicable rule is stated in Curry v. City of St. Louis, 237 Mo. App. 1112, 183 S.W.2d 155 (1944) thus:

"Although plaintiff was merely an employee of the city, and not an officer, the rule which applies to officers should apply to employees, i.e., where one is not appointed to a particular office, he is not entitled to the salary attached to such office, notwithstanding the fact that he might have performed some or all of the duties annexed to such office."  
183 S.W.2d at 159.

See also MacMath v. United States, 248 U.S. 151, 39 S.Ct. 31, 63 L.Ed. 177 (1918), and 63 Am.Jur.2d, Public Officers and Employees, § 362 at p. 364.

Accordingly, it is our opinion that the undersheriff is not entitled, during the vacancy in the office of sheriff, to the salary provided by law for that office.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj