



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

February 4, 1975

Opinion No. 75- 39

Mr. Larry D. Ehrlich
Russell County Attorney
Russell County Courthouse
Russell, Kansas 67665

Dear Mr. Ehrlich:

You inquire concerning the schedule of salaries payable to elected officials of Russell County commencing January 13, 1975.

You advise that, pursuant to K.S.A. 1974 Supp. 28-433, there was published a schedule of proposed salaries to be paid in 1975. No protest was filed against the proposed increases. The published salaries and compensation were based upon a population exceeding 10,000. However, the population of Russell County as of January 1, 1974, published August 23, 1974, is 9,492. (The 1973 census reports a population of 9,912 for Russell County as of January 1, 1973).

You inquire whether, effective January 13, 1975, the salaries of elected county officials may be paid at the rate published in 1974, based upon a population of over 10,000, although the population is under 10,000. In our opinion, only those salaries and compensation may be paid which are authorized by law for counties having a population of 9,492.

The publication of salaries was required by K.S.A. 1974 Supp. 28-433, which commences thus:

"The county election officer of each county shall, within thirty (30) days after the effective date of this act, publish a notice of increases in salaries and compensation authorized

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or prescribed under sections 1 to 56, inclusive, and section 90 of this act for officers and employees holding offices or employed within their respective counties." [Emphasis supplied.]

If a salary or compensation increase is not authorized to be paid by law, the payment of such increased salary or compensation does not become legal merely by the failure of the voters to object to such increased salaries, or to file a petition calling for an election thereon. Enclosed herewith is a copy of Opinion No. 75-24, which deals with precisely the question you pose.

It is, accordingly, our opinion that those salaries which may lawfully be paid elected county officials of Russell County effective January 13, 1975, are those salaries prescribed by law for counties with a population of 9,492. The board of county commissioners may by charter resolution alter the salary paid to any county officer which is not fixed by law applicable uniformly to all counties. In addition, the board may exercise its authority under K.S.A. 28-424 to provide increases thereunder. If further questions are concerning this matter, please feel free to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

January 28, 1975

Opinion No. 75- 24

The Honorable David L. Thompson
Montgomery County Attorney
Montgomery County Courthouse
Independence, Kansas 67301

Dear Mr. Thompson:

According to the census report of the Kansas State Board of Agriculture, published October 1, 1973, the population of Montgomery County was then 45,899. The population has since declined, according to the 1974 report, published August 23, 1974, to 42,431. You inquire concerning the effect of this decline on the salaries of certain elected county officials.

For example, in previous years, the sheriff has received a salary fixed by K.S.A. 28-820 for counties having a population of "more than 45,000 and not more than 60,000." As fixed by K.S.A. 1974 Supp. 28-820, that salary is fixed at \$10,017. As a result of the reported population decline, the next lower population bracket now applies, that applicable to counties having a population "[m]ore than 40,000 and not more than 45,000," now fixed at \$9,954.

You advise that on July 27, 1974, there was published, pursuant to K.S.A. 1974 Supp. 28-433, a notice of the increases in salaries and compensation authorized under ch. 361, L. 1974. The following month, the 1974 data became available, indicating that those salaries authorized by law were in some instances, at least, lower than those which had been published, the computations for the purposes of the July publication having been based on 1973 population reports. You inquire, specifically, whether the salaries paid during 1975 must reflect the decrease in population as published by the 1974 report of the Kansas State Board of Agriculture, or whether those salaries as published on July 27, 1974, must be paid notwithstanding the subsequently reported population decline.

The Honorable David L. Thompson
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January 23, 1975

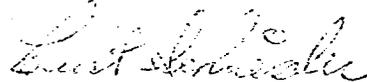
In our opinion, only those salaries and compensation may be paid during 1975 which are prescribed by law for counties having a population of 42,481. Publication required by K.S.A. 1974 Supp. 28-433 is necessary to permit payment of such increased salaries and compensation as may be authorized by law. At the time of the July, 1974, publication, salary increases could be computed only on the basis of the population reports then available. The publication based thereon was required by statute only to inform the electorate of the salary and other compensation increases which would become payable in 1975, and to entitle them to vote thereon, should a petition be filed therefor. The fact that increased salaries were published does not, however, authorize payment on such increased salaries when population data becomes available on the basis of which the law does not authorize the increases which were thus expected. Accordingly, it is our opinion that no greater salaries may be published than authorized by law for the county officers based on the most recent population reports.

We should point out that in the exercise of county home rule powers vested under K.S.A. 19-101a, the board of county commissioners may by charter resolution alter the salary paid to any county officer which is not fixed by a law applicable uniformly to all counties. K.S.A. 1974 Supp. 28-820, for example, is not applicable uniformly to all counties.

You inquire concerning the effect of the 5.5% raise allotted by the legislature for public officials on this situation. Section 78 of ch. 361, L. 1974, applies only to state officers and employees, and has no relation to salaries and compensation of county officers.

If further questions should arise concerning this matter, please feel free to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj