



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 10, 1975

Opinion No. 75-108

Mr. Paul E. Miller
Riley County Attorney
Riley County Courthouse
Manhattan, Kansas 66502

Dear Mr. Miller:

You inquire whether the official duties of either yourself, as county attorney of Riley County, or of the county counselor include the furnishing of legal counsel, services and advice to the Riley County Law Enforcement Agency and the Riley County Law Enforcement Department.

K.S.A. 19-704, unchanged for over a century, prescribes the basic duties of the county attorney:

"The county attorney shall without fee or reward, give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested by such board or officers, upon all matters in which the county is interested, or relating to the duties of such board or officers, in which the state or county may have an interest." [Emphasis supplied.]

K.S.A. 19-247 defines the duties of the county counselor thus:

"The county counselor shall, when requested by the board of county commissioners, or when it may be necessary, attend the meetings of such board, and shall give his advice upon all legal questions that may arise, and assist the board on all legal matters as may be referred to him; commence, prosecute or defend, as the case may

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require, all civil suits or actions in which the county is interested, represent the county generally in matters of civil law; draw all contracts and other papers required by the said board, and furnish to said board when requested by it to do so, opinions in writing upon legal matters pending before said board; and shall perform all the duties in civil matters that have heretofore been required by law of the county attorney of such counties."

The general view of the duties of county attorneys followed historically by this office is that stated by Attorney General John Anderson, Jr., in an opinion dated June 29, 1959, addressed to Mr. Donald D. Williams, Pottawatomie County Attorney, thus:

"In my opinion this section [19-704] contemplates that the county attorney shall advise officers who have county-wide jurisdiction, as to matters in which the state or county, as such, has an interest." [Emphasis supplied.]

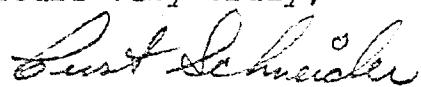
Reflecting this view, various Attorneys General have concluded that the county planning and zoning boards, county social welfare boards, county fair associations, and boards of trustees of county hospitals organized pursuant to K.S.A. 19-1801 et seq., are by law entitled to the services of the county attorney. In each instance, however, the entity which was concluded to be entitled to the services of the county attorney was an entity of the county government itself. County planning and zoning boards, for example, are instrumentalities authorized to be created by the board of county commissioners to assist the board in the performance of duties and responsibilities vested in that board of law. See, e.g., K.S.A. 19-2914 and -2915, and K.S.A. 19-2927 through -2937. County fair associations organized under K.S.A. 2-125 et seq., although organized as an incorporated association, function operationally and fiscally in intimate relationship with county government. County hospitals are organized as an entity of county government, and not as a separate governmental unit, and the trustees thereof are appointed by the board of county commissioners. K.S.A. 19-1801 et seq.

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These instances are fairly and substantially illustrative of the kinds of entities entitled by law to receive the services of the county attorney in his official capacity. The Riley County Law Enforcement Agency is not a department of county government. Upon approval by the voters, the agency is established not by the board of county commissioners, but by operation of law. K.S.A. 19-4427. Of the five members of the agency, if appointed, one shall be a member of the board of county commissioners, and another shall be a resident of the county appointed by the board. County government is thus represented on the agency itself, but the agency is not a part of county government. The agency is not an instrumentality of the board of county commissioners, and it is not created and does not exist to perform any duty or responsibility which is delegated by law to county government itself. Under K.S.A. 19-4429, it is the agency, and not the county, which is responsible for the enforcement of law and for providing police protection throughout the county. It is an administrative and fiscal entity separate from and independent of the board of county commissioners and the county as a body corporate and politic. The territorial jurisdiction of the agency extends throughout the county, but as indicated above, the agency is itself separate from the entities of county government themselves. Members of the agency and of the department are neither officers nor employees of the county, just as they are neither officers nor employees of any city in the county. They are officers and employees, as the case may be, of the agency itself.

We cannot but conclude that, inasmuch as the agency is not an entity of county government, that the county attorney is not required by law as a part of his official duties under K.S.A. 19-704 to provide legal counsel, advice and representation to the agency. Similarly, those duties to advise and represent the board of county commissioners and the interests of the county, as a governmental entity, in civil matters which pass from the county attorney to the county counselor upon appointment of the latter do not include the furnishing of legal counsel and representation to the law enforcement agency.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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