



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 14, 1977

ATTORNEY GENERAL OPINION NO. 77- 56

Mr. Kenneth L. Weltz
Ellis County Attorney
Post Office Box 725
Hays, Kansas 67601

Re: Counties--Home Rule--Funds

Synopsis: A county may, in the exercise of its home rule administrative powers, enter into agreements with other counties to share the cost of a trial of a person accused of committing an offense within the jurisdiction of such county, when the trial is to be held outside said county.

* * *

Dear Mr. Weltz:

You inquire concerning the validity of an agreement entered into by the boards of county commissioners of Ellis, Trego and Graham counties, whereby the counties agree to join together to defray the cost of the trial of Francis Donald Nemecek.

There is, of course, no express statutory authority for such an agreement. Fortunately, however, the time is now past when counties must look for express statutory authority for each local undertaking. K.S.A. 19-101a(a) commences thus:

"Counties are hereby empowered to trans-act all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions. . . ."

Mr. Kenneth L. Weltz
Page Two
February 14, 1977

None of the limitations, restrictions or prohibitions are applicable here. The only question presented is whether the agreement is properly a matter of county business and local administration. Clearly, this section authorizes the county to deal only with matters of county business and of local concern, and does not authorize the county to exercise its legislative authority extra-territorially. Here, however, the prosecution of accused persons for crimes occurring in Ellis County is a matter in which the county itself has an obvious interest, in its governmental capacity, and the county may exercise its administrative powers under K.S.A. 19-101a to oversee and pursue that interest, which is in and of itself local in nature, by agreements with other political subdivisions, either within or without the county, including other counties, whereby Ellis County devotes its public funds, perhaps in concert with other interested counties, toward the accomplishment of its clear governmental interest, in this instance, the prosecution of an accused person for a crime which occurred in Ellis County. Clearly, in my judgment, the agreement is within the authority of the county, and constitutes a lawful use of public funds.

Secondly, you ask out of whose budget the funds must be appropriated. You advise that the board of county commissioners entered into the agreement, and that there will be no participation by you as Ellis County attorney in the trial. Ordinarily, of course, this obligation would be satisfied from the county general fund. However, you advise that due to an innovative accounting system being implemented in Ellis County, funds are budgeted and appropriated to offices and departments of the county. Under these circumstances, it is my judgment that, the board of county commissioners being party to the agreement, that the monies paid thereunder should be appropriated from the budget of the board of county commissioners.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj