



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 15, 1977

ATTORNEY GENERAL OPINION NO. 77-90

Mr. Theodore H. Hill
County Counselor
Sedgwick County Courthouse
Wichita, Kansas 67203

Re: Courts--Judges Pro Tem--Social Security

Synopsis: Judges pro tem of Sedgwick County Court of Common Pleas, Probate Court and Juvenile Court during the period of 1974 through 1976 were officers of the respective courts in which they served, receiving compensation therefor from Sedgwick County, and the county is responsible for any withholding of Social Security contributions which may be due on payments made to said judges for their services.

* * *

Dear Mr. Hill:

I have your inquiry concerning the status of judges pro tem of the Sedgwick County District Court, the Court of Common Pleas, Probate Court and Juvenile Court under statutes in effect prior to January 10, 1977, the effective date of 1976 legislation implementing court unification.

K.S.A. 20-2011, since repealed, provides for the appointment of judges pro tem of the Court of Common Pleas as follows in pertinent part:

"Whenever any judge of said court is absent or has disqualified himself or the

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volume of cases before said court make such action advisable, any judge of said court may in writing appoint a judge pro tem of said court, who shall hold court as a qualified judge of said court and hear and determine any matter pending therein to the same extent that a regularly elected and qualified judge might do, and such judge pro tem shall fill such position during the time stipulated in said appointment. Said judge pro tem shall receive as compensation while actually acting as such, the sum of not to exceed fifty dollars (\$50) per day to be paid out of the county treasury. A judge pro tem shall have the same qualifications and shall take and subscribe the same oath as the judges of said court."

K.S.A. 38-804a, also repealed, provided for the appointment of judges pro tem of the Juvenile Court as follows:

"In addition to other provisions herein, the judge may appoint a judge pro tem, who shall be an attorney-at-law, to serve in the juvenile court when the juvenile judge and the full-time juvenile judge pro tem are unavailable or otherwise unable or disqualified to serve, who shall receive not to exceed the sum of fifty dollars (\$50) per day for each day of service as such judge pro tem."

These provisions typify statutory authority for the appointment of judges pro tem.

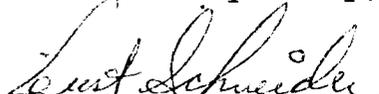
You advise that the question has arisen whether Sedgwick County is liable for Social Security contributions respecting compensation paid judges pro tem for the years 1974 through 1976. In your letter, you adduce three reasons why judges pro tem should not be deemed to have been county employees during the period in question. First, you advise that from conversations between the county controller and various judges and attorneys who have served as judges pro tem, neither the judges nor the attorneys considered their relationship to be one of employment. Secondly, you indicate that a majority, if not all, of the attorneys who served as judges pro tem reported the fees as self-employed income and paid self-employment taxes. Third, you indicate that said

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attorneys were paid in the form of warrant checks rather than payroll checks. You do not indicate on what basis these attorneys concluded that they were self-employed when serving as judges pro tem. In each instance, they were appointed by a judge to the position, performed the duties prescribed by statute, and received their compensation for those services from the county. While serving as judges pro tem, they were certainly not self-employed, but were officers of the respective courts in which they served, and received their compensation from the county, just as every other officer of those respective courts did. Manifestly, these judges pro tem were not self-employed, but were employed and appointed by the judges of the courts in which they sat. Neither before 1977 nor since have we had a self-employed judiciary in this state.

I can only conclude that the Department of Administration is correct, and that the individuals in question who served as judges pro tem of the respective courts were indeed officers of those courts during their periods of service as judges of pro tem, and received compensation from the county therefor. The county is thus the employing governmental entity.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj