

STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

May 13, 1977

ATTORNEY GENERAL OPINION NO. 77-159

Mr. Oliver Kent Lynch
Cherokee County Attorney
Cherokee County Courthouse
Columbus, Kansas 66725

Re: Counties--Officers--Salaries

Synopsis: An agreement by a member of the board of county commissioners to accept less than the full compensation provided by county resolution to be paid such officer is void as contrary to public policy, under decisions of the Kansas Supreme Court.

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Dear Mr. Lynch:

You advise that the Cherokee County board of county commissioners has fixed the salary of its members by resolution adopted pursuant to K.S.A. 1976 Supp. 19-101a et seq. You inquire whether one of the members of the board may agree to accept from the county clerk less than the full amount prescribed by that resolution.

As a general rule, an agreement by a public officer to accept compensation in either a greater or lesser amount than that prescribed by legislative authority therefor is void. See 63 Am.Jur.2d, Public Officers and Employees, § 393. In Peterson v. City of Parsons, 139 Kan. 701, 33 P.2d 715 (1934), the court stated thus in the syllabus:

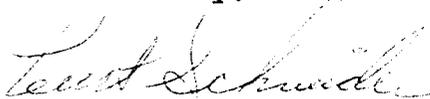
Mr. Oliver Kent Lynch
Page Two
May 13, 1977

"Any agreement by an appointive city officer of a city of the first class, where the salary for such office is fixed by ordinance pursuant to statute requiring it to be so fixed before his appointment, wherein he consents to a reduction of salary, is void and unenforceable as against public policy.

The consenting to a change in salary by ordinance by an appointive city officer of a city of the first class at the time of his appointment and the accepting of a reduced amount of salary thereafter without protest or complaint does not constitute a waiver of his right to the legal salary fixed by ordinance, nor amount to accord and satisfaction, because such contract is void."

The claim to compensation is not contractual, for the amount thereof is fixed by the board of county commissioners in its legislative capacity. Thus, there is no consideration to support an agreement between the commissioner and the board, or between the commissioner and the clerk, to accept less than the full and entire amount required to be paid for his services by the board's own resolution.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj