



STATE OF KANSAS

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Attorney General

June 6, 1977

ATTORNEY GENERAL OPINION NO. 77-180

Ms. Marilyn J. Johnson
Chairwoman
Board of County Commissioners
Cowley County Courthouse
Winfield, Kansas 67156

Re: Courts--Budgets--County Funds

Synopsis: K.S.A. 1976 Supp. 20-348 does not in and of itself vest in the district courts the power to levy taxes, nor to compel the expenditure of proceeds of taxes levied by the board of county commissioners in excess of the duly adopted budget for operations of the district court.

* * *

Dear Ms. Johnson:

You request my opinion whether K.S.A. 1976 Supp. 20-348 unconstitutionally confers upon the district court the power to levy taxes. It states thus:

"Except for expenses required by law to be paid by the state, from and after January 10, 1977, the board of county commissioners of each county shall be responsible for all expenses incurred for the operation of the district court in the county."

This section was enacted as § 41, ch. 146, L. 1976, an act which implemented the unification of the state judicial system as mandated by the voters' approval of a revised Article III of the Kansas

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Constitution in 1972. Part III of that act, §§ 41 et seq., provided for the financing of the district courts. The legislature chose to require counties to bear the cost of district court operations, substantially as they have in the past. K.S.A. 1976 Supp. 20-348 thus directs the counties to pay the expenses of those operations.

The question is raised, however, whether this section requires the board of county commissioners to bear any and all expenses incurred by the district court without limitation, and effectively to compel the board to levy taxes for district court operations in the amount directed by the court. The section must not be read in isolation. It must be read and applied in the context of other provisions of the act, and of other statutory enactments governing the budgeting and expenditure of county funds, including the Kansas cash-basis and budget laws.

K.S.A. 1976 Supp. 20-349 provides for the adoption of a budget. The administrative judge is responsible for the preparation of a budget "to be submitted to the board of county commissioners of each county for consideration and approval." It is within the authority of the board of county commissioners to review the budget so submitted, approve the proposed budget, or modify and approve it, just as it reviews the proposed budget for any county department or office, subject to one express limitation:

"No board of county commissioners shall decrease such budget for district court operations to a level below the aggregate budgets of state courts of limited jurisdiction and the support personnel paid by county funds which were authorized in such county in the 1976 calendar year."

Thus, the board of county commissioners may reduce the budget proposed by the administrative judge, but not below the amount of the aggregate budgets which were approved in 1975 for calendar year 1976 for the state courts of limited jurisdiction in the county and support personnel therefor paid by county funds. The administrative judge has control and supervision of the expenditures from the budget thus approved:

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"After the amount of said district court budget is established, the expenditures under said budget shall be under the control and supervision of the administrative judge, subject to supreme court rules relating thereto, and the board of county commissioners shall approve all claims submitted by the administrative judge within the limits of said district court budget."

The administrative judge has control only of expenditures made "under said budget," and the board of county commissioners must approve the payment of all claims submitted by the administrative judge which are "within the limits of said district court judge."

The budget for district court operations which is approved by the board of county commissioners is subject to the Kansas budget law. K.S.A. 79-2925 et seq. Expenditures therefrom are subject to the cash-basis law. Although the cash-basis law does not apply to the State of Kansas and its agencies, departments and the like, including the district courts, it does apply to counties. K.S.A. 10-1102 states thus, in pertinent part:

"All municipalities are required to pay or refinance their valid indebtedness as in this act provided, in the manner and at the times herein set forth, and to contract no indebtedness after May 1, 1933, except as herein provided."

Expenses incurred for the operation of the district court in the county are obligations of the county, and payment thereof is thus subject to the cash-basis law.

K.S.A. 10-1113 prohibits the creation or payment of any indebtedness which is "in excess of the amount of funds actually on hand in the treasury at the time for such purpose."

Thus, the board of county commissioners is responsible for those expenses incurred for operation of the district court in the county which are within appropriated funds, i.e., within funds which are appropriated by the budget which was approved by the

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The board of county commissioners thus retains the power to levy taxes for the operations of the district court in the amount it deems appropriate, subject to the statutory proviso that the budget may not be reduced by the 1975 budget for calendar year 1976 expenditures for courts of limited jurisdiction and support personnel paid from county funds.

Your inquiry raises implicitly the question of the inherent power of the court to order the board of county commissioners to furnish funds for the operation of the court. As indicated above, the board is responsible, first, for those expenses which are incurred for operation of the district court which are within appropriated funds, i.e., within funds which are appropriated by the budget which was approved by the board for operation of the district court. Circumstances may arise, however, in which the obligation of the commissioners to fund court operations may exceed budgeted monies. In a widely-cited decision, Commonwealth ex rel. Carroll v. Tate, 442 Pa. 45, 274 A.2d 193, cert. denied, 402 U.S. 974, the Pennsylvania Supreme Court held that the judiciary has inherent power, first, to determine what funds are reasonably necessary for its operations and, secondly, to compel the legislative branch to appropriate the funds so determined to be reasonably necessary. In Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963), the court held that "it is the plain ministerial duty of those who control the purse to pay such expenses [those necessary for operation of the courts] except only where the amounts are so unreasonable as to affirmatively indicate arbitrary and capricious acts," a ministerial duty which is enforceable by mandamus. See also Judges for the Third Judicial Circuit v. County of Wayne, 386 Mich. 1, 190 N.W.2d 228, 59 A.L.R.3d 548 (1971) and O'Coins v. Treasurer of the County of Worcester, 362 Mass. 507, 287 N.E.2d 608 (1972).

Thus, in approving a budget which satisfies the statutory funding "floor" in K.S.A. 1976 Supp. 20-349, the commission may not in every instance have exhausted their obligation to provide financial support for operations of the district court in their county. The budget which is approved in the first instance may be inadequate, or extraordinary and unforeseeable circumstances may occasion expenditures which exceed a budget which was reasonably believed to be adequate at the time it was approved. The inherent power of the court to provide for its own operations is not to be exercised lightly or arbitrarily, of course, and the parameters of that power have not yet been described in a reported opinion of the Kansas Supreme Court. Nonetheless, the clear weight of authority supports the existence of the inherent power of the court to order the responsible legislative body to provide the

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necessary funds for the administration of justice. In the infrequent circumstances when courts have been called upon to determine the existence and scope of that power, however, it is clear that the judiciary does not itself assume the power to levy and collect taxes.

Thus, to respond to your question, the power of the administrative judge to prepare and submit a budget to the board of county commissioners, and the obligation of the commissioners to fund that budget within the provisions of K.S.A. 1976 Supp. 20-348 and 20-349 does not constitute an unconstitutional delegation of the power to levy taxes to the courts.

You are correct that the present law gives the board of county commissioners little authority, if any, over district court personnel. The board can neither appoint nor terminate such persons. It cannot create nor abolish any position in the district court. It can prescribe the job description for any position, nor the qualifications which applicants must satisfy. The board cannot specify the terms and conditions of employment, including salaries. I understand that 1977 House Bill 2642 will require that the budget submitted to the board by the administrative judge to list the compensation to be paid to district court personnel whose total salary is payable by the counties as a separate item for each job position, thus providing the board with some measure of control over such salaries in its budget review and approval process. Although the board of county commissioners is required by law to fund the salaries for such personnel, it has none of the rights and privileges of an employer, and it is not in fact the employer. Article 3, § 1 of the Kansas Constitution specifies in pertinent part thus:

"The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law The supreme court shall have general administrative authority over all courts in this state."

Under K.S.A. 1976 Supp. 20-101, supervision of the personnel and financial affairs of the court system is vested in the Kansas Supreme Court, and the chief justice is responsible for implementing and executing that supervision. District court officers and

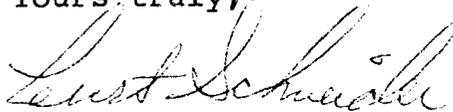
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employees are officers and employees of a single state court, over which supervision is vested by both express constitutional and statutory provisions in the Kansas Supreme Court. The boards of county commissioners have no authority over such personnel, however; they are liable for the expenses of district court operations because the legislature has imposed that liability upon them.

The question is also raised whether monthly rental in the amount of \$175 for the Arkansas City facility for the district court, and the cost of a new telephone installation which was contracted for the district court, including the first installation charge therefor, should be paid from the budget of the district court. As I have indicated above, the county is not responsible for expenses incurred for the operation of the district court except for those obligations which are within and paid from appropriated monies, i.e., monies budgeted for court operation. I understand that the rental contract for the Arkansas City court facility was signed by the board of county commissioners prior to January 10, 1977. If the administrative judge declines to approve payment from the court budget, the obligation under the lease or rental agreement would be properly payable from the general fund, inasmuch as the board is a signator to the agreement. However, inasmuch as the telephone installation was contracted for the administrative judge, that obligation is chargeable only against the budget of the district court, and is not an obligation against the county general fund.

Thus, to recapitulate, K.S.A. 1976 Supp. 20-348 does not constitute an unconstitutional delegation of the power to levy taxes to the district courts, for the levy of taxes for the operation of the district courts and the administration of justice therein remains a responsibility of the boards of county commissioners.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj