

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 22, 1978

ATTORNEY GENERAL OPINION NO. 78-127

Mr. Frank L. Johnson
Shawnee County Counselor
Room 205 - Shawnee County Courthouse
Topeka, Kansas 66603

Re: Counties and County Officers--County Counselors--Additional Compensation for County Municipal Bond Issues

Synopsis: K.S.A. 19-247 does not place rigid, mandatory duties upon the county counselor. The duties and responsibilities of a county counselor arises by employment contract between a board of county commissioners and its counselor.

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Dear Mr. Johnson:

You request my opinion whether a county counselor may receive additional compensation beyond his regular salary for services rendered in the preparation, issuance and sale of county municipal bonds.

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

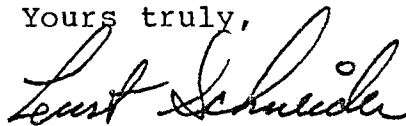
"The county counselor shall, when requested by the board of county commissioners, or when it may be necessary, attend the meetings of such board, and shall give his advice upon all legal questions that may arise, and assist the board on all legal matters as may be referred to him; commence, prosecute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

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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." [Emphasis added.]

It is a settled rule of law that a public officer may neither require nor accept additional compensation for services which he or she is required by virtue of his or her public position to perform or require. Under the quoted statute, the county counselor shall provide services "when requested by the county commission." As a matter of practical construction, counties throughout the state have entered into contractual agreements with attorneys to act as county counselors on widely varying bases. In some counties, the board of county commissioners may make substantial or very little use of the retained counselor, and provide for his or her compensation accordingly, some on a retainer basis, with additional hourly compensation, some on a fixed salary per annum. In short, the services which you are required to perform for the Shawnee County board of county commissioners by virtue of your position, and for which no additional compensation may be required, are those which are fixed and agreed upon under the existing contract of employment. If, as may be very possible, services as bond counsel are not provided for or contemplated by that agreement, provision may be made for your employment for those services for compensation in addition to that which you receive as county counselor.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj