



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

July 19, 1978

ATTORNEY GENERAL OPINION NO. 78- 237

Mr. B. D. Watson
Attorney at Law
109 West Laurel Street
Independence, Kansas 67301

Re: Municipal Courts--Costs--Assessments

Synopsis: Ch. 323, § 9, L. 1978, authorizing certain assessments for the benefit of the law enforcement training center fund to be imposed by municipal courts conflicts with the prohibition against the assessment of costs for the administration of justice in the Code of Procedure for Municipal Courts at K.S.A. 12-4112. To the extent of the conflict, the 1978 provision must prevail, and save and except for those assessments, the prohibition against the assessment of costs for the administration of justice remains in effect.

* * *

Dear Mr. Watson:

You inquire concerning section 9 of 1978 House Bill No. 3129, found at ch. 323, L. 1978, as applied to municipal courts of this state. Section 9(a) provides thus:

"Whenever an officer of any court of this state or any municipal court shall impose a fine or order a bail forfeiture as a penalty for violation of any of the laws of this state, ordinances of a city or resolutions of a county, such officer shall also impose and collect

Mr. B. D. Watson
Page Two
July 19, 1978

an assessment in addition to such fine or forfeiture. Such officer shall remit all moneys received from such assessments to the state treasurer at least monthly. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit the same to the law enforcement training center fund created by this act."

Subparagraph (b) provides a schedule of the assessments to be collected:

"(1) When a fine or forfeiture is five dollars (\$5) or more but less than fifteen dollars (\$15), the assessment shall be one dollar (\$1);

(2) when the fine or forfeiture is fifteen dollars (\$15) or more but less than fifty dollars (\$50), the assessment shall be two dollars (\$2);

(3) when the fine or forfeiture is fifty dollars (\$50) or more but less than one hundred dollars (\$100), the assessment shall be three dollars (\$3); and

(4) when the fine or forfeiture is one hundred dollars (\$100) or more, the assessment shall be five dollars (\$5)."

Section 11 of the act establishes the law enforcement training center fund, and provides that monies in the fund shall be expended to reimburse counties and cities for the costs of temporary replacement of law enforcement officers while attending the training center or certified training centers, to defray the costs of operation of the training center, and for grants to training schools certified by the dean of the Division of Continuing Education of the University of Kansas, as director of the center, pursuant to K.S.A. 1977 Supp. 74-5604 as amended, to defray the cost of operation of such training schools.

You inquire whether the provision for the assessment in section 9, *supra*, conflicts with K.S.A. 12-4112, a provision of the Code of Procedure for Municipal Courts, K.S.A. 12-4101 et seq., which states thus:

Mr. B. D. Watson
Page Three
July 19, 1978

"No person shall be assessed costs for the administration of justice in any municipal court case, except for witness fees and mileage as set forth in K.S.A. 12-1441."

What constitutes "costs of the administration of justice is not, of course, defined. Most obviously, it includes the cost of operation of municipal courts. In a broader sense, it may reasonably be deemed to include all municipal expenditures for the enforcement of municipal ordinances and for the prosecution of violations thereof. The apparent purpose of the prohibition was to prohibit the use of municipal court cost assessment as a general revenue sources for cities, and the prohibition surely applies equally to assessments for operation of the police department, as well as to assessments for operation of the municipal courts. Section 9 of ch. 323, L. 1978, thus appears to conflict with K.S.A. 12-4112.

However, the legislature having enacted the latter prohibition, it is equally free to amend or repeal it by later legislation. Article 2, § 16 of the Kansas Constitution directs how legislation may be amended:

"no law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed."

However, this section has been held not to prevent repeals by implication. In *Hicks v. Davis*, 97 Kan. 312 (1916), the court stated thus:

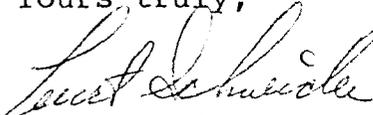
"The constitution plainly instructs the legislature as to its procedure when it deliberately sets out to amend or repeal a specific statute or a section of a statute. Of course, when the legislature is legislating directly on any subject, it may close its eyes, and frequently does, to all earlier legislation, and a later act, as the last expression of the legislative will, will supersede and repeal by implication all inconsistent earlier

Mr. B. D. Watson
Page Four
July 19, 1978

legislation. But when the legislature has a direct and special purpose in view, as it had when it attempted to revoke and expunge item 106 in the act of 1913, it was bound to amend the section in which it was incorporated."

A reading of ch. 323, L. 1978, does not betray a direct and special legislative purpose to amend the Code of Procedure for Municipal Courts, K.S.A. 12-4001 *et seq.* Its overriding purpose appears to have been the raising of revenue, in the sections in question here. The prohibition against the assessment of costs for the administration of justice remains in force, except for the assessment required by section 9 of ch. 323, L. 1978, for the benefit of the law enforcement training center fund. In *Tecumseh School District No. 7 v. Throckmorton*, 195 Kan. 144, 403 P.2d 102 (1965), in paragraph five of the syllabus, the court reiterated that Article 2, § 16 "does not apply to amendments by implication or to independent acts which only incidentally restrict existing legislation." Ch. 343, L. 1978, is just such an independent act, which to a limited extent, and only to that extent, restricts the application of K.S.A. 12-4112. To that extent, the later statute operates to repeal impliedly the earlier one, to the limited extent necessary to permit the operation of the later. Thus, I must conclude that both statutes remain intact, that to the limited extent that ch. 323, § 9, L. 1978, conflicts with K.S.A. 12-4112, the later one must prevail, and that save for such assessments, the prohibition against the assessment of costs for the administration of justice remains in effect.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj