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June 12, 1979

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ATTORNEY GENERAL OPINION NO. 79- 114

Edwin H. Bideau
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Re: Courts--Neosho County District Court--Division
of Expenses Between County and City of Chanute

Synopsis: By virtue of the combined provisions of K.S.A. 19-1306d and K.S.A. 1978 Supp. 20-348, the Board of County Commissioners of Neosho County is responsible for the payment of costs incurred in providing the janitorial services to the District Court of Neosho County sitting at Chanute. The county also is responsible for paying the expenses attendant upon remodelling of rooms provided to the court by the City of Chanute, pursuant to its statutory duty, except that where the remodelling is undertaken as a necessary incident to providing space to the court, the costs thereof shall be borne by Chanute. In addition, Chanute's duty to provide rooms for use by the court sitting at Chanute includes the obligation to provide rooms to personnel performing probation and parole functions of the district court.

* * *

Dear Mr. Bideau:

You have requested our opinion regarding interpretation of K.S.A. 19-1306d, which reads as follows:

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"The board of county commissioners of Neosho county, Kansas, shall make all necessary provisions for holding, conducting and maintaining said court in said cities in said county: Provided, That the city of Chanute shall place at the disposal of the county commissioners rooms in which to hold said court sitting at Chanute without cost to the county."

As you have recognized, K.S.A. 19-1306d is less than precise in defining the respective responsibilities of the City of Chanute and Neosho County. As a result, you have presented essentially three questions regarding this statute, which have arisen, you indicate, as a result of judicial reorganization. As we have phrased them, these questions are:

1. Who is responsible for the payment of the costs of janitorial services provided the court facilities at Chanute?
2. Is the City of Chanute or Neosho County responsible for the payment of remodeling costs for the new offices of the associate district judge?
3. Is the City of Chanute responsible for providing space for the district court's probation and parole staff and support personnel?

In addition to 19-1306d, it is apparent that the provisions of K.S.A. 1978 Supp. 20-348 have relevance to your inquiry. The latter statute, which was enacted as part of the so-called Judicial Reorganization Act (L. 1976, ch. 146), reads as follows:

"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."

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In our judgment, 19-1306d and 20-348 both deal with the financing of district courts and are, therefore, statutes in pari materia.

"Statutes in pari materia are those related to the same person or thing, or to the same class of persons or things, or which have a common purpose It is a well-established rule that in the construction of a particular statute, or in the interpretation of its provisions all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law" (Emphasis added.) Clark v. Murray, 141 Kan. 533, 537 (1935).

Even though these statutes were enacted at different times (19-1306d was enacted in 1955 and 20-348 in 1976), such fact does not preclude considering them as being in pari materia. Flowers, Administratrix v. Marshall, Administrator, 208 Kan. 900, 904, 905 (1972). The purpose, of course, of applying the rule of statutory construction regarding statutes in pari materia is to ascertain legislative intent. Id. at 904. "In determining legislative intent it is the duty of a court to construe all provisions of statutes in pari materia with a view to reconciling and bringing them into workable harmony, if reasonably possible to do so." Callaway v. City of Overland Park, 211 Kan. 646, 651 (1973).

In applying the foregoing rules of statutory construction to the subject of your inquiry, additional credence is given to the judicial comment that, "when the legislature is legislating directly on any subject, it may close its eyes, and frequently does, to all earlier legislation" Hicks v. Davis, 97 Kan. 312, 318 (1916). However, we do not find that the passage of 20-348 effects a repeal of 19-1306d by implication, even though it tends to ignore the earlier act. Repeals by implication are never favored in the law, and are only sanctioned by the courts where the later enactment is so repugnant to the provisions of the first act that both cannot be given force and effect. Wolff v. Rife, 140 Kan. 584, 587 (1934). Rather, we have concluded that these statutes can be harmoniously construed together, so as to ascertain a legislative intent permitting both to continue in force and effect.

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As we discern it, the legislative intent underlying the combined provisions of 19-1306d and 20-348 is that: (1) the only obligation of the City of Chanute respecting the District Court of Neosho County sitting at Chanute is to provide rooms for such court, without cost to the county, and (2) except for the expenses incurred by the City of Chanute in making space available to the court, and except for the expenses imposed by law upon the various branches of state government, all other expenses incurred in the operation of said district court sitting at Chanute are to be borne by Neosho County.

Therefore, in answer to your specific questions, it is our opinion that Neosho County is responsible for the payment of costs relating to janitorial services provided the court. We cannot construe such costs as falling within the ambit of the City of Chanute's responsibility to provide space to the court, and we are certainly unaware of any law imposing such costs on the state. Furthermore, considering only the provisions of 19-1306d, we think it rather obvious that the provision of janitorial services falls within the purview of the court's duty to make provisions for "maintaining" the court. Electric Service Co. v. City of Mullinville, 125 Kan. 79 (1928) adopts the view of the majority of jurisdictions as to the meaning of the term "maintain." At page 73 of the decision, the Court states:

"The ordinary meaning of the word 'maintain' is to keep in a particular state or condition, especially with reference to efficiency; to support, to sustain, to keep up; not to suffer to fail or decline."

Electric Service involved an agreement between a city and an electric service company whereby the utility had agreed to maintain a transmission line. It became necessary that the line be moved. The Court, after examining the usage of the word "maintain," held the cost of moving the line to be outside the contemplation of the parties. The definition ascribed to "maintain" in Electric Service is complemented by Mid-Continent Life Ins. Co. v. Henry's, Inc., 214 Kan. 350 (1974). There, the Court stated:

"The word 'maintain' does not mean to construct; it means to keep up, to keep from changing, to hold, to preserve in its present state or condition." Id. at 355.

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We have no difficulty in finding that the provision of janitorial services fits within the parameters of these judicial definitions of "maintain." In our view, the work of a janitorial staff is an integral part of sustaining the life of a building and keeping it suitable for use. Proper care of the floors, ceilings, windows, etc., does more than add to the aesthetics of a building; such care preserves and adds durability, preventing or impeding the failure or decline of the building's condition.

As to the responsibility for paying remodelling costs, we are not privy to the actual proposal giving rise to this question. However, unless the remodelling is a necessary and preliminary incident to making space available to the court, it is our conclusion that the costs thereof must be absorbed by the county. If 19-1306d were to be construed by itself, without considering 20-348, perhaps a different result would obtain. Such interpretation would be premised on the fact that the county's duty to maintain does not include the duty to remodel, thereby imposing such duty by implication upon the city. As expressed in 54 C.J.S. Maintenance:

"While maintenance includes the idea of keeping in repair, and is frequently used in the sense of keeping a thing in good condition by means of repairs, it has a very much broader meaning, and means to keep or preserve in good condition, and they may, and usually does, involve the making of repairs. However, ordinarily it does not mean additions or improvement of former conditions." (Citations omitted.) (Emphasis added.) Id. at 904.

However, we believe that the existence of 20-348 prevents the implicit and somewhat tenuous conclusion that the city would be liable in all instances for remodelling costs. The provisions of 20-348 have clarified the division of financial responsibility, leading us to the conclusion that, where remodelling is not an incident to the city's duty to provide rooms to the court, the costs attendant upon remodelling undertaken with the objective of improving, altering, refurbishing or adapting available space must be borne by the county as an operating expense of the court. We also are unaware of any law imposing such responsibility upon the state or any of its agencies.

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To reiterate our previous conclusion, we discern a legislative intent embodied by these statutes that the City of Chanute is to have a very limited role in the financial support of the court, i.e., the duty to provide rooms for use by the court at no cost to the county. Once that obligation has been fulfilled, we cannot find any basis for extending the city's obligation to include remodelling the rooms so provided.

Finally, however, we have concluded that Chanute is obliged to provide rooms to the court for use by its probation and parole staff and support personnel. Implicit in this conclusion is our determination that providing "rooms in which to hold said court sitting at Chanute" translates into a duty to provide rooms for all functions of the district court that are necessarily provided from the forum at Chanute. While there should be no doubt that probation and parole activities are functions of the district court, we find the following relevant language contained in K.S.A. 1978 Supp. 20-345 to be conclusive:

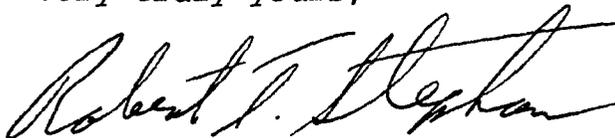
"Within staffing limits prescribed by the supreme court and appropriations therefor, the administrative judge of each judicial district, with the approval of a majority of the other district judges and associate district judges of such judicial district, shall appoint such bailiffs, court reporters, secretaries, parole and probation officers and other clerical and nonjudicial personnel as are necessary to perform the judicial and administrative functions of the district court." (Emphasis added.)

To summarize our response to your specific inquiries, it is our opinion that, by virtue of the combined provisions of K.S.A. 19-1306d and K.S.A. 1978 Supp. 20-348, the Board of County Commissioners of Neosho County is responsible for the payment of costs incurred in providing janitorial services to the District Court of Neosho County sitting at Chanute. The county also is responsible for paying the expenses attendant upon remodelling rooms provided to the court by the City of Chanute, pursuant to its statutory duty, except that where the remodelling is undertaken as a necessary incident to providing space to the court, the costs thereof shall be borne by Chanute.

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Finally, Chanute's duty to provide rooms for use by the Court sitting at Chanute includes the obligation to provide rooms to personnel performing probation and parole functions of the district court.

Very truly yours,



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Attorney General of Kansas



W. Robert Alderson
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RTS:WRA:gk