



STATE OF KANSAS

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June 15, 1979

ATTORNEY GENERAL OPINION NO. 79- 121

Shelley D. G. Bloomer
Osborne County Attorney
202 West Main Street
Osborne, Kansas 67473

Re: Counties and County Officers -- Sheriff -- Fees
and Salaries

Synopsis: A sheriff may legally receive and retain compensation from a Rural Fire District for performance as a volunteer fireman, since such a function is not a duty or obligation of the office of sheriff.

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Dear Ms. Bloomer:

You inquire whether it is permissible for the Sheriff of Osborne County to retain compensation received from the Osborne County Rural Fire District No. 1 for attendance at fires as a volunteer fireman. It is our understanding that your concern is whether such recompense may constitute the receipt of compensation for the performance of the duties and obligations of the office of Sheriff, thereby invoking the provisions of K.S.A. 1978 Supp. 28-175, which require county officers to forward additional compensation to the county treasurer for deposit in the county general fund.

The initial consideration in addressing your inquiry is whether the sheriff has a duty or obligation to attend all fires which occur in Osborne County. The duties of a sheriff are outlined in K.S.A. 19-813 which provides:

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"It shall be the duty of the sheriff and undersheriffs and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner, may call to their aid such person or persons of their county as they may deem necessary."

Although attendance at fires could arguably be included within the duties established in the foregoing statute, it is our opinion that such a conclusion would require an unreasonably broad interpretation of the statutory language. While it is clearly in the best interests of public safety that law enforcement officers provide assistance at the scene of a fire, we are not able to conclude that there is an affirmative duty on the sheriff to do so. This position is supported by the fact that firemen are vested with various police powers at the scene of a fire as set out in K.S.A. 31-145 which provides:

"Actual members of any organized fire department, whether regular or volunteer, of any municipality shall be vested with police power to form fire lines, to prohibit persons from interfering with firemen in the discharge of their duties, interfering with apparatus, running over fire hose and trespassing upon private property, and shall have power to blockade any public highway temporarily while fighting a fire; and for the purpose of effectuating this police power shall have the power to make arrests for violation of any lawful orders made hereunder."

In light of the preceding discussion, it is our opinion that the sheriff may legally receive and retain compensation paid by the Osborne County Rural Fire District for his performance as a volunteer fireman. The payments would not constitute compensation for the Sheriff's performance of the duties and obligations of his public office, and the provisions of K.S.A. 1978 Supp. 28-175 would not be applicable.

It should be noted that this opinion is based upon the factual proposition that the sheriff attends the fires and functions as a fireman rather than as a law enforcement officer. A contrary result would be

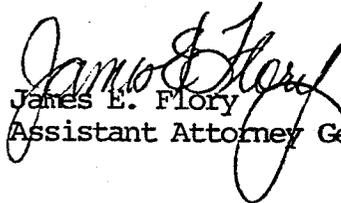
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required if the Sheriff merely performed general law enforcement functions while at the fire, i.e. traffic control, security, etc. In the latter case, K.S.A. 1978 Supp. 28-175 would prohibit the sheriff from retaining the compensation and would direct the proper handling of any such compensation received.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



JAMES E. FLORY
Assistant Attorney General

RIS:TDH:JEF:may