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December 7, 1979

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ATTORNEY GENERAL OPINION NO. 79-279

John L. Weingart
Assistant County Attorney, Brown County
Office of the Brown County Attorney
Brown County Courthouse
Hiawatha, Kansas 66434

Re: 1) Counties and County Officers--County
Buildings--Power of County Commission to
Construct

2) Counties and County Officers--Fees and
Salaries--Allowance for Deputies

Synopsis: 1) A county commission may erect a jail
without an election authorizing such
expenditure when the funds for the project
are to be taken from the county general
fund, without an increase in the mill levy.

2) A county commission does not have the
authority to adjust the salaries of deputy
sheriffs after the sheriff's department
budget is set.

* * *

Dear Mr. Weingart:

You request our opinion on two different questions concerning the use of county funds, namely: 1) may the board of county commissioners authorize the expenditure of approximately \$750,000 from the county general fund for a new jail facility without an election authorizing such action; and 2) does the board of county commissioners have any authority regarding the salaries of deputy sheriffs once it has approved the total dollar expenditure for the sheriff's department budget?

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As to your first inquiry, you state that the board of county commissioners is considering the construction of a new jail facility for Brown County, a step which would cost around \$750,000. The Commission clearly has the authority to establish and maintain such a structure, both under the general powers delegated to it by K.S.A. 19-212(3) regarding the construction of county buildings, and under the specific grant of power found at K.S.A. 19-1901 regarding the erection of a jail at each county seat, at the expense of the county.

We also would call your attention to K.S.A. 19-15,114 et seq. which deals with the power of the commission to construct "public buildings" and the manner in which they may be financed. K.S.A. 19-15,114 defines a "public building" as including any building or structure determined by the board of county commissioners to be necessary to the county for any public county purposes. Jails would be among such buildings, especially in light of 19-1901, which requires the construction and maintenance of a jail at each county seat.

K.S.A. 19-15,115 gives the county commissioners a general power to construct public buildings, while 19-15,116 sets out several permitted methods of financing such projects, including general obligation bonds [at subsection (b)] and annual tax levies [at subsection (c)], both of which methods require the approval of the voters.

However, subsection (f) of the same statute provides that a county may also "[u]se moneys from the general operating budget or other appropriated budgeted fund when such is available." This would appear to apply in your case, as you indicated that the funds would be derived from the county general fund. This conclusion is supported by the case of Seltmann v. Bd. of County Commissioners, 212 Kan. 805, 809 (1973), wherein it was noted:

"From 1868 until 1965 the legislature maintained a consistent legislative policy that a county could not appropriate money for public buildings without a popular vote of the electors of the county. This policy found its origin in a general statute covering counties and county officials. (G.S. 1868, Chapter 25, § 18.) This statute was amended from time to time down through the years and may be read in its most recent form in K.S.A. 19-1503 [repealed in 1969]. In 1965 the legislature modified its general legislative policy by enacting what is now K.S.A. 1972 Supp. 19-15,114 through 19-15,118.

. . . .

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"There is no question that the legislature intended to relax its previous legislative policy that a county could not construct any public building without the consent of the people."

However, you should note that such an expenditure would still be subject to K.S.A. 79-2927, which requires that it be itemized as a separate expenditure even though it is to be paid from the general fund. Additionally, the expenditure must be itemized, so as to appear in the budget, before it may be made.

Finally, the cost of the project is irrelevant, given that moneys from the general operating fund are to be used. K.S.A. 19-15,116 does contain a requirement that the construction of any public building costing over \$100,000 be put before the voters, but this provision deals only with buildings funded by the issuance of general obligation bonds, and is accordingly inapplicable here.

Therefore, a county commission may erect a jail without the need for an election authorizing such expenditure when the funds for the project are to be taken from the county general fund, without an increase in the mill levy.

Your second inquiry concerns the power of the board of county commissioners to adjust (whether up or down you do not say) the salaries of deputy sheriffs after the sheriff's budget has been approved in terms of a total dollar expenditure.

K.S.A. 19-805 authorizes the sheriff of each county to "appoint such and so many deputies as he may think proper" and to "revoke such appointments at his pleasure." He also is responsible for their supervision, direction and control. Sedgwick County Commissioners v. Toland, 121 Kan. 109 (1926). The deputies' salaries, like all county salaries, are paid out of the county general fund pursuant to K.S.A. 28-168. Additionally, K.S.A. 28-167 provides that the board of county commissioners shall allow "such reasonable sums" for salaries and compensation of assistants and deputies as may be necessary to properly expedite the business of various listed county offices, including that of sheriff.

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As to whether the county commissioners possess the authority to alter the salaries of deputies after the sheriff's budget has been set in terms of total dollar expenditure, it is necessary to examine the statutes applicable to the county budgeting process set out in K.S.A. 79-2925 through 79-2963, and amendments thereto, commonly referred to as the Budget Law. From an examination of these provisions, it would be our conclusion that once the sheriff's department budget is set, the way in which the funds are disbursed is solely within the control of the sheriff. Of course, this control is qualified by the limits of the budget, civil service regulations (if any) and so forth.

The process of setting a yearly budget is set out by K.S.A. 79-2927, which in summarized form provides that each year the governing body of each taxing subdivision shall prepare a written budget that is properly itemized and classified by funds for the ensuing year. The subsequent budgeting process is set out in K.S.A. 1978 Supp. 79-2929, which states in part:

"Prior to the filing of the adopted budget with the county clerk, the governing body of each taxing subdivision or municipality shall meet for the purpose of answering and hearing objections of taxpayers relating to the proposed budget and for the purpose of considering amendments to such proposed budget. Said governing body shall give at least ten (10) days' notice of time and place of said meeting by publication in a weekly or daily newspaper of the county having a general circulation therein, which notice, except as otherwise herein-after provided, shall set out all essential items in the budget . . ."

The effect of the approved budget is considered in K.S.A. 79-2934, which provides:

"The budget as approved and filed with the county clerk for each year shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose. No money in any fund shall be used to pay for any indebtedness created in excess of the total amount of the adopted budget of expenditures for such fund, and any balance remaining in such fund at the

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end of the current budget year shall be carried forward to the credit of said fund for the ensuing budget year

"No part of any fund shall be diverted to any other fund . . ." (Emphasis added.)

Finally, the meaning of the word "fund" is found in K.S.A. 79-2925(b) where it is provided that:

"Whenever the word 'fund' is used in this act it is intended to have reference to those funds which are authorized by statute to be established. 'Fund' is not intended to mean the individual budgeted items of a fund, but is intended to have reference to the total of such individual items."

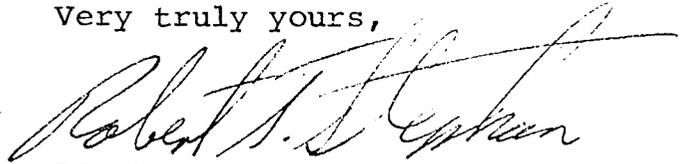
It is our opinion that while the foregoing statutory scheme mandates the commissioners' formulation of an explicit budget for each year, it does not give them power to control the management of the offices of elected officials such as the sheriff during the year. The final budget is the result of proposals, negotiations and compromise between the board and the sheriff, and once it is filed, it is a final statement by the board of the moneys which are available for the sheriff to run his department. As noted above, the sheriff is given total discretion over the control of his deputies, and it would be an abridgment of this management authority for the board to retain continuing control over individual items in the sheriff's budget such as the deputies' salaries.

Nor could this be altered by charter resolution, for a county may utilize its "home rule" powers to alter acts of the legislature only when those acts are non-uniform in application, pursuant to K.S.A. 19-101b(a). K.S.A. 19-805 acts as a uniform grant of power to all Kansas sheriffs over their deputies, and therefore may not be so altered.

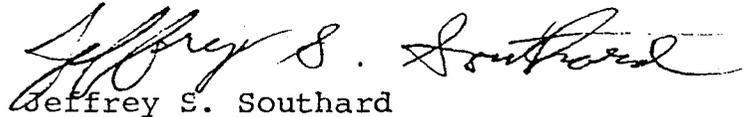
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Therefore, it would be our opinion that a county commission does not have the authority to adjust the salaries of deputy sheriffs after the sheriff's department budget is set. While the power of the commissioners regarding the financial matters of the county is extensive, it may not be exercised so as to impinge upon the statutory authority of the sheriff, a duly elected county official in his own right.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk