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February 6, 1980

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ATTORNEY GENERAL OPINION NO. 80- 32

Mr. Ronald E. Miles
Chief Clerk of the District Court
First Judicial District
Courthouse
Leavenworth, Kansas 66048

Re: State Departments; Public Officers and
Employees--Compensation and Allowances
of State and Municipal Officials--Reim-
bursement for Travel by District Court
Employees

Synopsis: District court employees are to be
reimbursed for official travel in a
privately-owned conveyance at the mileage
rate prescribed by the secretary of
administration under the authority of
K.S.A. 1979 Supp. 75-3203.

* * *

Dear Mr. Miles:

You have asked for our opinion concerning the proper mileage allowance to be paid district court employees. As you have pointed out, K.S.A. 1979 Supp. 75-3203 authorizes the secretary of administration to establish the rate to be allowed "any public official of the state or any of the municipal subdivisions thereof" as compensation for expenses incurred by official travel in privately-owned conveyances. The above-cited statute also contains a provision whereby "[t]he governing body of any county, city or school district may prescribe a rate different from that provided for in this section as to officers and employees of such county, city, or school district." K.S.A. 1979 Supp. 75-3203.

The proper analysis of this issue necessarily begins with the classification of district court personnel; if deemed employees of the state, the rate set by the department of administration will apply to official travel of district court personnel, but if deemed employees of the county, district court personnel will be subject to the rates set by the county commission.

In a series of opinions issued from 1976 to 1978, Attorney General Curt Schneider explained the effects of the court unification program on the status of court personnel. Attorney General Opinion No. 76-234 concluded that the board of county commissioners could not require district court clerks to file a bond because under the statute, only appointive officers and employees of the county were required to do so. The district court clerk and personnel of that office were to be considered officers and employees of the district courts and not the county, so therefore were not affected by the statute.

A subsequent opinion issued September 17, 1976--Attorney General Opinion No. 76-289--concluded that "personnel of the offices of the clerk of the district court, court services, and of the court administrator shall not be subject to personnel rules and policies of the county, for they are not county officers and employees." The opinion referred to Attorney General Opinion No. 76-234, and explained that although the county was required to fund the budget for the payment of salaries of most district court personnel, the positions of district court personnel were controlled and supervised by Supreme Court Rules. Because the district courts are part of a state system of courts, court personnel are state employees and not subject to county personnel regulations.

The most recent Attorney General opinion to be issued concerning the proper classification of district court personnel is Attorney General Opinion No. 78-359, issued November 8, 1978. In that opinion, Attorney General Curt Schneider explained that although the county was required to bear the costs of the salaries and compensation of nonjudicial district court personnel, it did so as an instrumentality of the state and not as an employer. The opinion concluded that as of January 1, 1979, these personnel were not county employees, and as such, when the state of Kansas assumed the payment of their salaries on January 1, 1979, this was not a termination of employment by the county such as that contemplated by county personnel policies providing for payment for unused sick leave or termination.

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Statutory provisions enacted during the last three legislative sessions tend to support these conclusions as well. For example, K.S.A. 1979 Supp. 20-162 gives the Kansas Supreme Court the responsibility of establishing a personnel classification system which will, among other things, prescribe the powers, duties and functions of each class, the method of removal of such personnel, and pay plans for various personnel of the court system. In addition, the budget for district court expenses--including the compensation to be paid certain non-judicial personnel--is to be prepared by the administrative judge in each district, subject to supreme court rules. K.S.A. 1979 Supp. 20-349. K.S.A. 1979 Supp. 20-348 requires the county to pay all of the operational expenses incurred by the district court, except for those required by law to be paid by the state. Finally, K.S.A. 1979 Supp. 20-359 speaks directly to the issue of the classification of district court employees paid by the county. In pertinent part, K.S.A. 1979 Supp. 20-359 provides:

"With regard to district court officers and employees whose salary is payable by a county, the county shall serve as fiscal and reporting agent and pay and provide for old age survivors and disability insurance contributions and income tax withholding. All payments made by a county to judicial department employees or on their behalf, shall be deemed to have been paid by the state of Kansas. . . ."
(Emphasis added.)

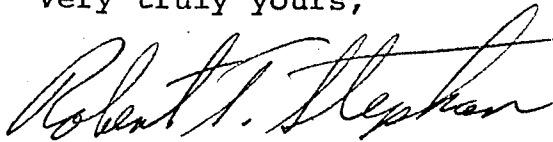
This seems to show conclusively that it was the intent of the legislature to consider the county an instrumentality of the state for ease in accounting and allocation of funds.

Therefore, we agree that personnel of the district court are to be considered employees of the state. They are appointed and supervised by state officers. Their compensation is prescribed by supreme court rule or by statute. The county merely acts as an instrumentality of the state when it provides compensation to certain district court personnel.

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As previously noted, the proper mileage rate to be applied pursuant to K.S.A. 1979 Supp. 75-3203 to official travel of any public official of the state is the rate prescribed by the secretary of administration. The governing body of the county has the authority to prescribe a different rate only for officers and employees of such county. Considering these requirements in light of our conclusion that there is an obvious legislative intent that district court personnel are to be deemed state employees, persuades us to the opinion that district court personnel are to be reimbursed for official travel in a privately-owned conveyance at the mileage rate prescribed by the secretary of administration.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

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