STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

March 13, 1980

ATTORNEY GENERAL OPINION NO. 80- 69

Mr. Gene Marks
Sheriff of Barton County
P.O. Box 87
Great Bend, Kansas 67530

Re: Counties and County Officers -- County Commissioners -- Control of Expenditures

Synopsis: The authority and responsibility with respect to county expenditures is vested in the board of county commissioners as a general rule. An exception to the rule exists when the expenditure or obligation is necessary in order for an elected official to carry out his or her statutorily imposed duties or obligations.

Fees and compensation collected by county officials or employees should be credited to the county general fund pursuant to K.S.A. 1979 Supp. 28-175, and restitution amounts for damage to county-owned property may properly be placed in the county general fund.

* * *

Dear Sheriff Marks:

You present three questions which relate generally to the expenditure of county funds for the purpose of carrying on the operation of your office. First you inquire if you, as the duly elected Sheriff of Barton County, may properly purchase necessary equipment and other items without obtaining prior approval from the Board of County Commissioners. Secondly, you inquire if the Board of County Commissioners may properly refuse to pay bills incurred by your office. Finally, you question whether various fees and restitution may properly be placed in the budget of the sheriff rather than being deposited in the county general fund.

In order to address your first inquiry it is necessary to consider a number of statutes which concern the authority and responsiblity of both the sheriff and board of county commissioners as well as the limited Kansas case law in this area. The powers and duties of the board of county commissioners are established in both the statutory home rule provisions of K.S.A. 19-101a through 19-101f, and amendments thereto, and K.S.A. 19-212, which provides in relevant part:

> "The board of county commissioners of each county shall have the power, at any meeting:
>
> . . . .
>
> " Second. To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the county; and when so settled, they may issue county orders therefor, as provided by law.
>
> . . . .
>
> " Sixth. To represent the county and have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law."

Also relevant to this area is K.S.A. 19-229 which provides:

> "The boards of county commissioners of the several counties of this state shall have exclusive control of all expenditures accruing, either in the publication of the delinquent tax lists, treasurer's notices, county printing, or any other county expenditures."

When the foregoing statutory language is considered in conjunction with the legislative grant of authority embodied in the home rule provisions previously cited, it is clear that as a general rule the board of county commissioners is vested with both the authority and responsibility for overseeing the expenditure of county funds and for the care of county-owned property. It is our opinion that this general rule prevails in the area of optional expenditures; however, we recognize a number of circumstances wherein the general rule, vesting authority in the board of county commissioners, must give way to competing statutory provisions. It is for this reason we believe that the nature of the expenditure is an integral factor in determining whether prior approval by the board of county commissioners is necessary, and further, whether the board of county commissioners may refuse to pay obligations incurred by other county officials.

Illustrative of competing statutes which establish exceptions to the general rule in the case of a county sheriff are the following:

> K.S.A. 19-811. "The sheriff shall have the charge and custody of the jail of his county, and all the prisoners in the same, and shall keep such jail himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable."
>
> K.S.A. 19-812. "The sheriff in person or by his undersheriff or deputy shall serve and execute, according to law, all process, writs, precepts and orders issued or made by lawful authority and to him directed, and shall attend upon the several courts of record held in his county, and shall receive such fees for his services as are allowed by law."
>
> K.S.A. 19-813. "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."

In addition to the foregoing statutes which impose general statutory duties on the sheriff of a county, there are numerous specific circumstances wherein the sheriff is required by state law to perform functions incident to his or her office. (See, e.g., K.S.A. 21-2501, 28-107, 60-2602 and 79-3617 and K.S.A. 1979 Supp. 79-2101.)

In essence, when a sheriff or other elected official incurs financial obligations for equipment or supplies which, by the very nature of the items are directly necessary for the official to perform the duties and obligations imposed by state law, it is our opinion that the official need not obtain prior approval from the board of county commissioners for every item purchased, and further, that the county is liable for such expense.

As early as 1911 the Supreme Court of Kansas addressed the responsibility of the county with respect to necessary repairs and supplies for the county jail. Norton v. Simms, 85 Kan. 822 (1911). Following a review of the statutes applicable to the care and maintenance of the county jail, the Court in Norton affirmed the trial court's holding that the county was liable for such necessary expenses. A more recent case involving county liability for necessary expenses is that of Mt. Carmel Medical Center v. Board of County commissioners, 1 Kan App.2d 374 (1977). In Mt. Carmel, the Court stated:

> "In this case, the sheriff had reacquired custody of the prisoner in an injured condition. It was the Sheriff's duty to provide the indigent prisoner with medical care of a type and kind that could not be provided in the county jail or in any place other than a hospital. The sheriff could not abandon his prisoner or merely put the injured indigent prisoner back in a cell without medical care. . . .
>
> "We conclude that the medical services rendered by the appellee were proper charges against the county under the facts in this case." Id. at 380, 381.

In light of the statutes and authority cited, we believe that county officials may purchase equipment and supplies which are directly necessary in order for the official to perform duties established by state law. In such selected circumstances the board of county commissioners may not properly disallow such expenditures.

It is obvious that in the course of carrying out the functions of a county official there are instances in which an official desires to purchase equipment and supplies to more efficiently transact the business of the office, but which may not be properly characterized as "necessary" for the official to meet statutory duties. It is in this area of discretionary expenditure that we believe the authority of the board of county commissioners to examine and settle accounts may properly be exercised. In Comm'rs of Neosho Co. v. Stoddart, 13 Kan. 207 (1874), the Court considered a situation where the district judge and sheriff, in concert, created an indebtedness by purchasing cocoa matting to be placed on the floor of the court room. In finding that the board of county commissioners lawfully disallowed the claim the Court stated:

> "Indeed, every law upon the statute book that has any reference to the subject would seem to indicate that the county board had exclusive control, within the law, of all county expenditures; and there is no law upon the statute book that authorizes either the district court, or the sheriff, or both together, to contract for the county or to create an indebtedness against the county in any case similar to the one now under consideration." Id. at 211-12.

In Hackler v. Board of County Commissioners, 189 Kan. 697 (1962), the court considered expenses incurred by the county election commissioner in the form of attorney fees which were incurred without prior approval of the board of county commissioners. Following the Stoddart case, the court held that the board of county commissioners could properly refuse payment of the claim.

Having considered expenditures which may be characterized as either necessary or not necessary for an official to carry out statutory functions and the legal authority and responsibilty thereto, we are now faced with consideration of those items which do not lend themselves readily acceptable to either category. These items would be those which are clearly beneficial for a public officer to carry out his or her official functions, and in a practical sense, would appear to constitute a considerable portion of a county's annual expenditures. It is with respect to these items that there is an obvious absence of guidance from either statutory or decisional law. Since we do not believe that such items evince a clear exception to the general rule of authority and responsibility vested in the board of county commissioners, it is our opinion that the general rule must control.

As previously mentioned, for the reason that such items would constitute a considerable portion of over-all county purchases we believe that a policy of "shared discretion," i.e., a grant of limited authority from the board of county commissioners to the county officials, would be appropriate. Such a policy would, especially in light of the annual budget control available to the board of county commissioners, permit the county official to properly manage his or her office and at the same time effect the degree of fiscal control desired by the board of county commissioners. Absent such shared discretionary authority, we believe that it would be virtually impossible for county officials and county government as a whole to function with any semblence of efficiency.

By way of review, it is our opinion that there are essentially three (3) categories of purchases which may be involved in your inquiry, and that each category involves a different level of authority and responsibility as between the board of county commissioners and the other county officials. To be more specific with regard to the categories and attendent authority would be impossible in light of the multitude of variations they may involve.

Your final inquiry relates to various fees collected by you or your officers and restitution received for damage done to equipment controlled by your office. You specifically question whether such amounts should properly be credited to the budget of the sheriff, rather than be placed in the general fund. With respect to the issue of fees or compensation received by county officers or employees, we believe that K.S.A. 1979 Supp. 28-175 is dispositive. That statute provides, in part:

> "County officers and employees shall receive no compensation, tips, fees, mileage or salaries, which compensation, tips, fees, mileage or salaries are or shall be paid to such officer or employee directly or indirectly by reason of his or her performance of the duties or obligations of such county office or employment, unless such compensation, tips, fees, mileage or salaries are specifically allowed to them by law. All such compensation, tips, fees, mileage or salaries received, directly or indirectly by them or from their respective offices from any source whatsoever, which compensation, tips, fees, mileage or salaries would not have been received except for such officer's or employee's performance of the duties or obligations of such county office or employment, including all notary fees collected by any officer, deputy or clerk in any proceeding pending or to become pending, filed or to be filed in said office, not specifically authorized to be retained by them, shall be paid over on the first and fifteenth days of each month, or if either of said dates be a Sunday or legal holiday, then on the next secular day, to the county treasurer accompanied by a sworn statement in such form as the board of county commissioners may prescribe, to the effect that all compensation, tips, fees, mileage and salaries collected are correctly set forth therein. <u>All such compensation, tips, fees, mileage and salaries shall be placed by said treasurer to the credit of the county general fund.</u> . . ." (Emphasis supplied.)

From the foregoing it is our opinion that placing such fees in the county general fund is required by state law.

With respect to restitution received subsequent to damage to property under the control of the sheriff's department, it should be noted that the sheriff's budget is merely a budgeted item within the county general fund. As such, it would seem appropriate to place restitution amounts in the fund which were credited for the original expenditure. It would also seem appropriate for the amount involved to be directed to the sheriff in order to repair or replace the equipment damaged; however, we are acquainted with no statutory provision to require such a result.

Although your request did not detail all pertinent facts of a particular case it is our understanding that your opinion request was prompted, in part, in order to more fully understand your position vis a vis the board of county commissioners with respect to expenditure of county funds, and in part due to a specific expenditure for materials and supplies which is currently in dispute. It has been the long-standing policy of this office to refrain from rendering opinions where, as in this instance, the facts giving rise to the inquiry may be in dispute or where the application of legal principles to a particular factual situation requires a judgmental decision by a public officer or governing body. It is not the purpose of this office to second guess such decisions, and it is only appropriate for a competent trier of fact to ascertain the facts and to render judgment as to the decisions made in applying the law to such facts. This rationale is especially cogent when there is potential for litigation of the factual issues. Having discussed the particular situation with both you and the Barton County Attorney, Jane Isern, it is clear that there are numerous collateral questions which must be considered in this instance, e.g., implied authority, prior ratification of similar acts, legal effect of county policy, etc. For these reasons, we cannot address the specific factual situation of any individual purchase, but rather, would suggest that you utilize the general guidelines set out in this opinion to resolve the individual situation you have described.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

RTS:TDH:JEF:may