



STATE OF KANSAS

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March 17, 1980

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ATTORNEY GENERAL OPINION NO. 80-71

Mary F. Hope
Commissioner of Elections
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Counties and County Officers--Election
Commissioners--Assistant Election
Commissioner; Salary

Synopsis: A county election commissioner is empowered by K.S.A. 19-3420 to fix the annual salary of his or her assistant election commissioner. While a board of county commissioners may, by charter ordinance, establish this power in the Board, in the absence of such a resolution the setting of the assistant's salary remains the authority of the election commissioner.

* * *

Dear Ms. Hope:

As Election Commissioner for Shawnee County, you have requested the opinion of this office concerning the payment of your assistant election commissioner's salary. Specifically, you inquire whether you have the authority to set this amount, or whether the power is held by the Board of County Commissioners of Shawnee County.

We are informed that the budget of your office was approved by the Board of County Commissioners on August 30 of last year. One item you had requested was a 10% increase in the salary of the assistant election commissioner, and the budget as ratified included such an increase. However, on January 10, 1980, the Board of County Commissioners, in Resolution 80-2, fixed the salary of your assistant at \$14,500, which represented an increase of only 3.5%. This action was taken by a regular, not a charter, resolution.

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The statute governing the salary of an assistant election commissioner is K.S.A. 19-3420, in which it is stated:

"The election commissioner shall appoint one assistant, known as assistant election commissioner, who shall receive an annual salary to be fixed by the election commissioner and shall be paid in the same manner as other county officers and employees." (Emphasis added.)

This language, in our opinion, is clear and unambiguous, stating as it does that while the assistant is to be paid as are other county employees, his or her salary is to be "fixed" by the election commissioner alone. In the context of arriving at salaries, this term is understood to mean "established or settled, to remain for a time." Black's Law Dictionary, p. 574, 5th ed. (1979). Additionally, if the Board of County Commissioners could be said to have the power to do so, this language would be mere surplusage, a result which in construing statutes is to be avoided whenever possible. See Driscoll v. Hershberger, 172 Kan. 145, 155 (1951), Southeast Kansas Landowners Assn v. Kansas Turnpike Authority, 224 Kan. 357, 367 (1978).

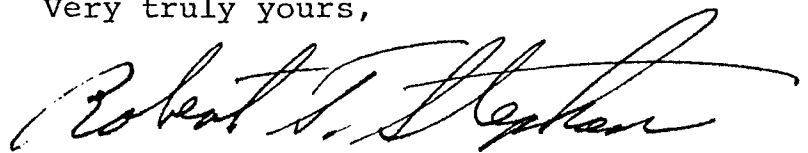
An opinion of this office dealing with a situation somewhat similar to this one was issued in 1979. That opinion, No. 79-113, dealt with a resolution of the Board of County Commissioners in Shawnee County which regulated the appointment powers of several other county officials, including the District Attorney. As one of several points, the opinion held that as the resolution conflicted with the terms of a state statute giving the power to appoint assistants to the District Attorney (K.S.A. 22a-106), it could not be of any force and effect as to those particular positions.

In our opinion, the same result should be reached here. The language of the statute is explicit, and should be construed so as to have the effect which was intended. Easom v. Farmers Ins. Co., 221 Kan. 415, Syl. 2 (1977). While it appears that the statutes dealing with election commissioners are non-uniform and such of them as pertain to "county business" could be made the subject of a charter resolution pursuant to the county's home rule powers (K.S.A. 1979 Supp. 19-101b), the change here was not made by such a resolution. As a result, it is our conclusion that a county election commissioner is empowered by K.S.A. 19-3420 to fix the annual

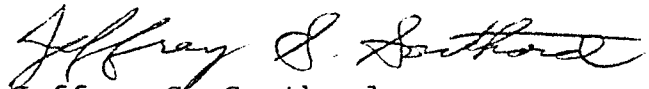
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salary of his or her assistant election commissioner. While a board of county commissioners may, by charter ordinance establish this power in the Board, in the absence of such a resolution the setting of the assistant's salary remains the authority of the election commissioner.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk