



STATE OF KANSAS

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April 9, 1981

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ATTORNEY GENERAL OPINION NO. 81-86

Mr. William M. Malcolm
Clay County Attorney
705 Fifth Street
Clay Center, Kansas 67432

Re: Counties and County Officers--General Provisions--
Transaction of County Business

Synopsis: The Board of County Commissioners of Clay County may change the amount of compensation to be paid the Clay County Treasurer for calendar year 1981. Cited herein: K.S.A. 1980 Supp. 19-101a.

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Dear Mr. Malcolm:

You seek an opinion concerning the authority of the Board of County Commissioners of Clay County to change the amount of compensation to be paid to the Clay County Treasurer during calendar year 1981.

Your inquiry is based upon the following facts: By resolution, dated January 12, 1981, the Board established the salaries to be paid to certain county officials, including the county treasurer, for calendar year 1981. At the time said resolution was passed, the county treasurer was Mrs. Alice Bender. Mrs. Bender had been re-elected as county treasurer at the last preceding general election, and had been the Clay County Treasurer for a period of approximately 15 years. Mrs. Bender died in the latter part of January, 1981. Of course, a person will be

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appointed to fill the vacancy created by the death of Mrs. Bender. The Board believes the person who will be appointed will not have the experience Mrs. Bender had and, thus, should be paid a lesser salary.

You inquire specifically:

"Can the Board of Commissioners of Clay County, Kansas, negotiate with the to be appointed Clay County Treasurer concerning the 1981 salary or are they bound by the Resolution effective January 12, 1981, setting the 1981 salary for the position of County Treasurer, which said Resolution was based on the assumption that Mrs. Bender would be serving as County Treasurer?"

You inform us you have advised the Board that, as long as the Board confines its action within the restraints of the county's 1981 budget, said Board is empowered to change the amount of compensation to be paid the Clay County Treasurer. We concur with your advice.

The fixing of salaries for county officers has always been a legislative function and, until 1976, the legislature fixed the salary of county officers. See, for example, L. 1974, ch. 361. Following enactment of the "county home rule statutes," however, in 1974 (L. 1974, ch. 110), the legislature repealed most of the statutes relating to the compensation to be paid such officers, and now allows such matter to be determined by the locally-elected boards of county commissioners. Thus, in establishing the salaries to be paid to the various county officers of Clay County, the Board was doing what the legislature had done until 1976.

In the case of Miller v. Ottawa County Comm'rs, 146 Kan. 481 (1937), the Court was called upon to decide whether a board of county commissioners possessed the power to reduce the salary of a county engineer, after he had commenced his duty as such. In concluding that such power existed, the Court said:

"In the case of Harvey, Treas., v. Comm'rs of Rush Co., 32 Kan. 159, 4 Pac. 153, it was contended by three county officers of Rush county that the election and qualification of a county officer is a contract entitling him to compensation for his services during the term for which he is elected, and that the legislature is prohibited from making a law to diminish the salary of an officer elected and qualified before its passage. It was there held:

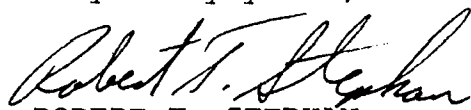
"A county office is not a contract, and the incumbent is not protected in it by the prohibition of the federal constitution against the impairment of the obligation of contracts. A county officer has no such vested interest in the salary as will prevent the legislature from diminishing it during his term of office. (Comm'rs of Norton Co. v. Shoemaker, 27 Kan. 77; Gray v. Crockett, 30 Kan. 139, 143.)' (Syl.)

"In the body of the opinion it was stated:

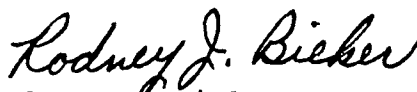
"Public offices in this state are mere agencies for the benefit of the people--not contracts on their part with the officeholder for his benefit. Therefore, there is no contract, express or implied, between a public officer and the state or county whose agent he is. Officeholders have no agreement or contract that they shall receive any particular compensation for the term they hold office. Their terms are fixed with the view to public utility and convenience, and not for the purpose of granting the emoluments or salary during any fixed period to the officeholder. The legislature may exercise its control by increasing or diminishing the salary or emoluments of an office. . . .' (p. 162.) (See, also, Coulter v. Pool, 187 Cal. 181, 201 Pac. 120.)" 146 Kan. at 486.

As the Court has determined that the legislature, when it fixed the salaries of county officers, could diminish those salaries even during a term of office, and as the legislative function of fixing the salaries of county officers now is performed by local boards of county commissioners, we believe the boards of county commissioners possess the same power to diminish the salaries of county officers as was possessed by the legislature. Thus, it is our opinion that the Board of County Commissioners of Clay County may change the amount of compensation to be paid the Clay County Treasurer for calendar year 1981.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General