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July 7, 1981

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ATTORNEY GENERAL OPINION NO. 81-156

Ms. Willetta Herdman, CKA  
Rush County Appraiser  
Rush County Courthouse  
La Crosse, Kansas 67548

Re: Counties and County Officers -- County Appraiser --  
Appointment of Specialized Help for Appraiser

Synopsis: K.S.A. 1980 Supp. 19-425 requires the consent and approval of the board of county commissioners at the time the appraiser makes the appointment of assistants. Approval of the budget which includes compensation for assistant appraisers does not constitute such consent.

While the board of county commissioners may appoint the deputy appraiser to be noxious weed supervisor, and there is no incompatibility in the functions and duties of these two positions, the deputy appraiser may refuse the appointment. Cited herein: K.S.A. 2-1316, 19-235, K.S.A. 1980 Supp. 19-425, K.S.A. 28-824, and U.S. Const. Amend. XIII.

\* \* \*

Dear Ms. Herdman:

You have requested an opinion regarding whether the board of county commissioners may refuse to consent to and approve the appointments made by the county appraiser for specialized help pursuant to K.S.A. 1980 Supp. 19-425. You state that the county commissioners have already provided an amount in the 1981 budget for salaries for specialized help and that previously your office has employed three specialized appraisers who, in your judgment, are still needed to permit you to carry

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out the duties of your office. You have also inquired as to the propriety of the county commission requiring the deputy appraiser to act as noxious weed supervisor.

Your first inquiry involves an interpretation of K.S.A. 1980 Supp. 19-425, which states:

"The county or district appraiser appointed under the provisions of this act shall have all the powers and duties vested in and imposed upon county assessors by law except as otherwise provided herein. From and after the effective date of this act any reference in the Kansas Statutes Annotated or amendments thereto to the 'assessor' or 'county assessor' or words of similar import shall be construed as referring to the 'county appraiser' or 'district appraiser.' He shall appoint deputy appraisers and fix their salaries with the consent and approval of the board of county commissioners or district board. Each deputy appraiser, before entering upon the duties of his office, shall take and subscribe to an oath in like manner as that provided for the county or district appraiser. With the consent and approval of the board of county commissioners or district board, he may appoint such specialized help as he may need to properly assess specific properties and may pay them such compensation as the board of county commissioners or district board shall provide. The board of county commissioners or district board shall furnish him necessary office space and such clerical help as may be needed to carry out the duties of his office." (Emphasis added.)

In addition to the requirement that compensation be provided for specialized help by the Board of County Commissioners, the statute clearly requires the consent and approval of the board of county commissioners before the appraiser may appoint needed specialized help. Therefore, the board must consent to and approve any appointment of specialized help before the appointment will be valid.

The next matter to be determined is whether the board of county commissioners has already given its consent and approval to such appointments by providing compensation for three additional employees in the county budget.

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The budget law, found in K.S.A. 79-2925 et seq., requires county officials to submit yearly budgets for approval by the board of county commissioners. Additionally, K.S.A. 19-235 provides:

"That whenever the county commissioners of any county in the state of Kansas shall allow any sum of money to any county officer for clerk hire or for an assistant in his office, the said sum so allowed shall be available for the payment of any such clerk hire or assistance, upon itemized and verified vouchers presented by the clerk of assistant employed in such office, and such voucher shall be approved by the county officer in whose office such clerical work or assistance is performed. All payments made on account of such voucher shall be made directly to the clerk of assistant performing such services, and in no case shall any part of the moneys so allowed by the county commissioners be paid to the county officer in whose office such work or assistance is performed." (Emphasis added.)

The duty imposed by these fiscal procedures upon the board of county commissioners is to make funds available to pay any assistants who will be hired. This is consistent with K.S.A. 28-824 which imposes a similar duty as follows:

"The board of county commissioners of all counties shall allow such reasonable sums for salaries and compensation of assistants, deputies, clerks and stenographers as may be necessary to properly expedite the business of the several offices of the county."

Hence, the board has the duty to provide funding for assistants and specialized help pursuant to the above cited statutes. However, in the case of specialized help permitted by K.S.A. 1980 Supp. 19-425, the board is given the additional authority to approve or disapprove the appointments to be made by the county appraiser. In our judgment, mere compliance with the Budget Law in setting aside adequate funds for the payment of specialized help for the county appraiser is not a sufficient manifestation of consent to the appointment of such help to constitute Commission approval. Consent may involve consideration of the identity and qualifications of the persons selected by the appraiser. Certainly this cannot be done in advance of the selection.

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In Attorney General Opinion No. 79-109, this office considered the advice and consent powers of a city council with regard to mayoral appointees. We cited therein a Kansas Supreme Court case recognizing the discretion to be exercised by a legislative body empowered to give or withhold consent to administrative appointments. See Shaw v. Baker, 179 Kan. 729 (1956). In addition, we made reference to State ex rel. v. Lander, 87 Kan. 474 (1912), which concerned a statute giving "advice and consent" authority to certain city councils. The Court imposed a duty upon the council to give or withhold its consent in "good faith," saying "[t]he spirit of this statute requires that the council act in good faith upon the appointments made by the Mayor and that if their confirmation be withheld, it be for some reason sufficient to actuate honest men in the performance of their duty although they are not required to express what such reason is." 87 Kan. at 477. We believe this principle is equally applicable here. Hence, while the advice and consent powers of the Board may not be ignored, such powers must be exercised in "good faith."

You also have inquired whether the duties of noxious weed supervisor may be imposed upon your deputy appraiser. You state that Rush County currently has no weed supervisor and the board has required the Rush County deputy appraiser to handle the duties of a weed supervisor. Weed supervisor is a position created by K.S.A. 2-1316, which states in pertinent part thus:

"The board of county commissioners of each county shall, and the governing body of any incorporated city or any group of counties or cities may, employ for a stated time each year, with the approval of the secretary of the state board of agriculture, a competent person as county, city or district weed supervisor. The weed supervisor shall cooperate with the county assessor and deputy assessor in locating infestations of noxious weeds."

The county is required by this statute to employ a weed supervisor. The appraiser and deputy appraiser are to cooperate with and assist the weed supervisor in locating noxious weeds while proceeding with their other duties. We find no statutory authority permitting the county to impose the duties of weed supervisor upon the deputy appraiser. From the wording of your inquiry, we are unable to determine whether the county commission has offered employment or appointment to the deputy

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appraiser. Assuming that the offer has been made it will still be necessary for the deputy appraiser to accept the position before the position can be deemed filled by him. See 63 Am.Jur.2d Public Officers and Employees, §101. The Thirteenth Amendment to the United States Constitution prevents involuntary servitude except as punishment for a crime. Therefore, even if the county commission seeks to employ or appoint the deputy appraiser to the position of weed supervisor, the deputy appraiser may refuse to serve in that capacity.

If the deputy appraiser wishes to accept the position, we must consider whether he may hold both positions at the same time. A deputy appraiser is a public officer; therefore, he may only hold an additional position if the latter is not incompatible with the former. See Dyche v. Davis, 92 Kan. 971 (1914). The Kansas Supreme Court applied the doctrine of incompatibility of offices in that case, although the person held only one office but was also a state employee. Incompatibility of offices was defined in Abry v. Gray, 58 Kan. 148 (1897):

"The incompatibility . . . must be something more than the mere physical impossibility of the performance of the duties of the two offices by one person, and may be said to arise where the nature and duties of the two offices are such as to render it improper, from considerations of public policy to retain both." Id. at 149.

The impropriety may arise if the duties of one are contrary to the duties of the other or one office is in some way subordinate to the other. See 89 A.L.R.2d 632, 67 C.J.S. Officers, §27. In this instance, since neither position is subordinate to or responsible for the other, no apparent incompatibility exists.

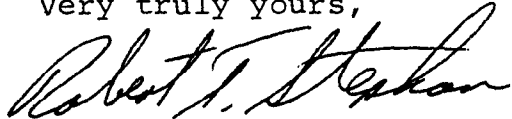
If the deputy appraiser also accepts the position of weed supervisor, he is entitled to the compensation established for both. As stated by the Kansas Supreme Court in Congdon v. Knapp, 106 Kan. 206 (1920):

"Unless prohibited by constitutional provision or statutory law, one person may hold two offices if their duties are not incompatible

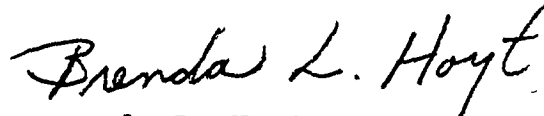
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with each other. And in the absence of such prohibition, if one person holds two offices, the performance of the duties of either of which does not in any way interfere with the duties of the other, he is entitled to the compensation fixed by law for both." (Citations omitted.) (Emphasis added.) Id. at 207.

Very truly yours,



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Brenda L. Hoyt  
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RTS:BJS:BLH:hle