



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 30, 1982

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 82-100

Mr. William D. Rustin
Sedgwick County Counselor
Suite 315, Sedgwick County Courthouse
Wichita, Kansas 67203-3790

* But see 19-269

Re: Counties and County Officers -- Fees and Salaries --
Advancement of Travel Expenses to Sheriff's Officers

Synopsis: Charter Resolution Nos. 9 and 14 of Sedgwick County, providing for the advancement of travel expenses to county officers and employees, are valid exercises of county home rule power except where they conflict with uniformly applicable legislative enactments. K.S.A. 28-110 is uniformly applicable to all counties in providing for the reimbursement of travel expenses incurred by the sheriff and sheriff's officers in certain instances, thereby precluding the advancement of travel money in those instances. Cited herein: K.S.A. 10-801, 12-105a, 12-105b, 19-101a, 19-264, 28-110, 77-201.

* * *

Dear Mr. Rustin:

You have requested an opinion from this office regarding whether Sedgwick County Sheriff's officers may be advanced travel moneys from the county petty cash fund. Charter Resolution No. 9, adopted on December 3, 1975, by the Board of County Commissioners of Sedgwick County, exempted the county from the constraints of K.S.A. 19-264 et seq. and established a petty cash fund in the amount of \$5,000. Charter Resolution No. 14, adopted on November 10, 1976 by the Board of County Commissioners of Sedgwick County, incorporated the provisions of Charter Resolution No. 9, except that the amount of the petty cash fund was increased to \$10,000.

William D. Rustin
Page Two

K.S.A. 19-101a authorizes boards of county commissioners

"to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject to the following limitations: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties" (Emphasis added.)

In Attorney General Opinion No. 78-363 it was determined that, pursuant to K.S.A. 19-101a et seq., the Board of County Commissioners of Sedgwick County could validly enact a charter resolution establishing the petty cash fund. By implication, Sedgwick County Charter Resolution No. 14, is also a valid exercise of county home rule power. However, the charter resolutions are ineffective to alter uniformly applicable legislative enactments.

K.S.A. 28-110 is a uniformly applicable legislative enactment and concerns, inter alia, reimbursement for travel expenses incurred by sheriffs in the performance of certain specified official duties. K.S.A. 28-110 states in pertinent part:

"[N]o mileage shall be taxed or allowed and no person shall be required to pay any mileage unless at the time of making returns the sheriff shall make and file with his returns, or as a part thereof, a statement showing the distance actually and necessarily traveled in making service . . . , and the distance actually and necessarily traveled by the sheriff in making such service shall clearly appear
And further provided, that the sheriff shall receive, in addition to the compensation allowed him by this act, for serving under requisition made by the governor, his necessary transportation and board actually paid out for himself and prisoner."

The language of K.S.A. 28-110 indicates that travel expenses may not be advanced to sheriff's officers when undertaking to serve any official document that requires the filing of a return. Further, it is our considered opinion that the phrase "serving under requisition made by the governor" refers to extradition proceedings and travel expenses incurred in such are governed by the payment restrictions of K.S.A. 28-110. (The definition of "sheriff" at K.S.A. 77-201, Nineteenth, requires that these reimbursement restrictions also extend to any person performing the duties of the sheriff.) However, we are unable to find any authority for

William D. Rustin
Page Three

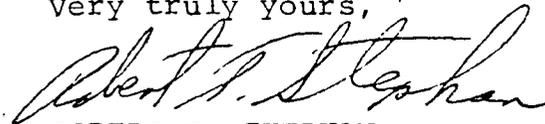
restricting advancement of travel expenses to sheriff's officers in performance of official duties other than those specified in K.S.A. 28-110. We note that the sheriff's department is apparently the only county department that is subject to such a reimbursement restriction.

Attorney General Opinion No. 79-264 (attached) addressed the issue of whether various county employees (including the sheriff) could be advanced money for travel expenses. That opinion cited K.S.A. 28-110 and stated:

"Apart from some limited exceptions such as that mentioned above [regarding sheriffs], it would be our opinion that the board of county commissioners does have the authority pursuant to K.S.A. 19-101a et seq., to establish policies providing for the payment of advance money to county employees."

Finally, because we are of the opinion that K.S.A. 28-110 is uniformly applicable to all counties, claims made for reimbursable travel expenses submitted by the sheriff must comply with the requirements of K.S.A. 10-801 et seq., 12-105a and 12-105b (Uniform Procedure for Payment of Claims and Other Indebtedness by Municipalities).

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
Assistant Attorney General

RTS:WRA:RVE:hle

Enc.