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ATTORNEY GENERAL OPINION NO. 82- 112

The Honorable Jack H. Brier
Secretary of State
2nd Floor - Capitol
Topeka, Kansas 66612

Re: Elections -- Primary Elections -- Filing Fees of
Candidates for State Offices

Synopsis: Pursuant to K.S.A. 25-206, the filing fees required of candidates for the various state offices are to be computed on the basis of the salaries in effect for these offices at the time the declarations of candidacy for these offices are filed in the office of the secretary of state. However, the salary used to compute the filing fee required of any person filing a declaration of candidacy for state office on or after June 18 and prior to the filing deadline of noon on June 21, 1982, shall not include any cost of living increase made in such salary on June 18, 1982, by section 26 of 1982 Senate Bill No. 893. Cited herein: K.S.A. 25-205, 25-206; Section 26 of 1982 Senate Bill No. 893.

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Dear Secretary Brier:

You have requested our opinion regarding the filing fee required of candidates for the various state offices for which there will be an election in November of this year. As you noted in your letter of request, the filing fee is prescribed by K.S.A. 25-206, which provides in pertinent part, as follows:

"(a) Except as provided in subsection (b), when a candidate in lieu of nomination papers shall file a declaration of intent to become a candidate for any national, state, county

or township office the accompanying fee shall be in an amount as follows: For the office of United States senator, congressman from any district or at large, all state offices, and all county offices, where the salary is over one thousand dollars (\$1,000) per year, a sum equal to one percent (1%) of one (1) year's salary as determined by the secretary of state for state and national offices, and as determined by the county election officer for county offices." (Emphasis added.)

In light of this statute, you note that the filing fee for each of the various state offices is to be "a sum equal to one percent (1%) of one (1) year's salary," and you have asked whether the amount of each such filing fee should "be based on the salary at the time of filing or on the commencement of the term of office," i.e., the salary in effect on January 10, 1983.

Initially, we note that previous attorneys general have responded to this question on several occasions. Most recently, Attorney General Vern Miller responded to a similar request from former Secretary of State Elwill M. Shanahan. By his letter of April 13, 1972, Attorney General Miller stated as follows:

"At your request, we have reviewed Opinion No. 70-25-2, issued April 16, 1970, by Attorney General Kent Frizzell, wherein he concluded that under K.S.A. 25-206, the filing fee for candidacy should be computed according to the salary for the office involved which was in effect at the time of filing, and not according to an increased salary which becomes effective at the commencement of the next term of office. We agree with that conclusion, and adopt that opinion as our own."

Although on two prior occasions (letter opinions of December 22, 1967, and February 23, 1968) Attorney General Robert Londerholm reached a contrary conclusion, we think the opinions expressed by Attorneys General Miller and Frizzell represent the better view. Moreover, it is our understanding that you previously have followed the opinions expressed by Attorneys General Miller and Frizzell. Our impression results from information supplied this office by a member of your staff, indicating that the filing fees charged persons declaring their candidacies for the various state offices in 1978 were based on the salaries for these offices in effect at the time of filing, notwithstanding that these salaries

would be increased at the commencement of the next term of each such office in January of 1979. In this regard, your letter does not indicate that your prior practice has caused you any legal or practical difficulties.

Accordingly, it is our opinion that, pursuant to K.S.A. 25-206, the filing fees required of candidates for the various state offices should be computed on the basis of the salaries in effect for these offices at the time the declarations of candidacy for these offices are filed in your office. However, in reaching this conclusion, we are not unmindful of the fact that, pursuant to section 26 of 1982 Senate Bill No. 893, the governor, lieutenant governor, attorney general, secretary of state, state treasurer and commissioner of insurance will receive a cost of living increase in their respective annual salaries on June 18, 1982. The percentage increase in the salaries for each of these offices will be the equivalent of the percentage cost of living increase effected in the salaries of state employees in the classified service under the Kansas civil service act by section 1 of that bill. In light of this year's deadline of noon on June 21 for filing declarations of candidacy (see K.S.A. 25-205), it is appropriate to consider whether persons filing their declarations of candidacy for any of these state offices on June 18 or by noon on June 21 of this year are required to pay filing fees reflecting the cost of living increase attributable to the salaries for these offices. In our judgment, no such increase in the filing fees should be made.

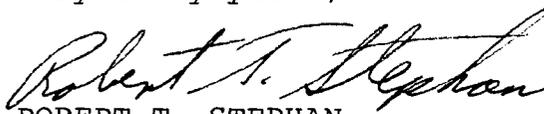
Our opinion is again predicated on prior opinions of this office. Although we have found no opinion precisely on point, a review of our files has disclosed no less than 10 opinions of previous attorneys general who have considered similar issues relating to filing fees to be paid by candidates for county offices. Each of these prior opinions concluded that the filing fees for county officers are to be computed on the basis of the basic salaries for these offices, and are not to be based on the total remuneration to be received by these officers, i.e., the salaries used for computing the filing fees are not to include any compensation that is in addition or supplemental to the basic salaries prescribed for the various officers. Specifically, in a letter opinion dated February 12, 1956, Attorney General Harold R. Fatzer concluded that the salaries used to compute filing fees for candidates for county offices should not include a cost of living increase provided the various county officers by a board of county commissioners.

We have found no case law or prior opinion of this office expressing a conclusion contrary to the above-referenced opinions. Hence, we find no basis for departing from these precedents, and we believe they should apply with equal force to

the situation at issue here. The equity of such conclusion is inescapable. Were we to conclude that the salaries used to compute filing fees for state offices should include the cost of living increases to be effected in such salaries on June 18, 1982, persons filing declarations of candidacy for such offices on that date and prior to the filing deadline of noon on June 21, 1982, would pay a greater filing fee than persons filing declarations of candidacy for such offices prior to that time.

Accordingly, it is our further opinion that the salary used to compute the filing fee required of any person filing a declaration of candidacy for state office on or after June 18 and prior to the filing deadline of noon on June 21, 1982, shall not include any cost of living increase made in such salary on June 18, 1982, by section 26 of 1982 Senate Bill No. 893.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



W. Robert Alderson
First Deputy Attorney General