



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 139

The Honorable Maxine Cumro  
District Magistrate Judge  
Marshall County Courthouse  
Marysville, Kansas 66508

Re: Counties and County Officers -- County Attorney --  
Power of Court to Appoint When Temporarily Dis-  
qualified

Synopsis: K.S.A. 19-711 authorizes the district court to  
appoint an attorney to serve as county attorney  
when the county attorney and his or her deputy have  
a conflict of interests and are unable to repre-  
sent the county. Cited herein: K.S.A. 19-711.

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Dear Judge Cumro:

You inquire of this office as to whether, as district magis-  
trate judge, you are authorized to appoint an attorney to  
serve as county attorney when the duly elected county attor-  
ney has a conflict of interests.

You further inquire whether the definition of "disability",  
as used in K.S.A. 19-711, includes ethical disqualification.

K.S.A. 19-711 states:

"In the absence, sickness or disability of  
both the county attorney and his deputy, any  
court before whom it is his duty to appear and  
in which there may be business for him, may  
appoint an attorney to act as county attorney,  
by order to be entered upon the minutes of the  
court." (Emphasis added.)

-Maxine Cumro

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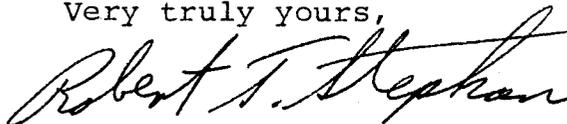
It is our opinion that K.S.A. 19-711 authorizes you, as district magistrate judge, to appoint an attorney to represent the legal interests of the county when the duly elected county attorney and his or her deputy are unable to do so.

The term "disability" was construed in an attorney general letter opinion issued March 1, 1965 and reproduced at Volume V, p. 159 of the Opinions of the Attorney General. That opinion states:

"[T]he word 'disability' was inserted [in K.S.A. 19-711] to cover a wide variety of cases in which the duly elected county attorney is unable to represent the state . . . . In our opinion the word 'disability' includes cases of ethical disqualification." (Emphasis added.)

It is our considered opinion that the above construction of 'disability' is proper and accurate. For your convenience we have enclosed a copy of the above-cited opinion for your review. See also State v. Coover, 165 Kan. 179 at 183-184 and Attorney General Opinion No. 62-50.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Robert Vinson Eye  
Assistant Attorney General

RTS:BJS:RVE:hle

Enc.