



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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September 20, 1982

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ATTORNEY GENERAL OPINION NO. 82- 210

The Honorable Charles F. Laird  
State Representative, Fifty-Ninth District  
3501 Shawnee Court  
Topeka, Kansas 66605

Re: Counties and County Officers -- County Counselor --  
County Attorney -- Duties of

Synopsis: K.S.A. 19-247 authorizes county counselors to render advice and written opinions on all legal matters including issues that may have criminal implications. This authority is not contrary to statutes requiring county and district attorneys to commence and control criminal prosecutions. Cited herein: K.S.A. 19-247, 19-248, 19-704.

\* \* \*

Dear Representative Laird:

You have requested an opinion from this office regarding whether a county counselor may advise a board of county commissioners on criminal matters. Your opinion request states in part:

"It is my understanding that the county counselor can advise the county commissioners on matters of civil law. However, the counselor cannot advise them regarding criminal matters. Criminal matters should be referred to the county attorney. Is this correct?"

Your request does not specify a particular factual context that prompts this inquiry. Therefore, we shall respond with the following general observations.

K.S.A. 19-247 states:

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"The county counselor shall, when requested by the board of county commissioners, or when it may be necessary, attend the meetings of such board, and shall give his advice upon all legal questions that may arise, and assist the board on all legal matters as may be referred to him; commence, prosecute or defend, as the case may require, all civil suits or actions in which the county is interested, represent the county generally in matters of civil law; draw all contracts and other papers required by the said board, and furnish to said board when requested by it to do so, opinions in writing upon legal matters pending before said board; and shall perform all the duties in civil matters that have heretofore been required by law of the county attorney of such counties." (Emphasis added.)

Hence, many duties, traditionally laid upon the shoulders of the county or district attorney, become the duties of the counselor appointed by the county. See, e.g., K.S.A. 19-704. K.S.A. 19-248 relieves county attorneys and district attorneys of the obligation to represent counties in civil actions when a county counselor has been appointed (with a limited exception not pertinent here). However, K.S.A. 19-248 states further that

"[n]othing herein contained shall be construed to limit, qualify or in any manner affect the duties of said county attorney in any criminal actions or business, and said county attorneys shall continue to discharge such duties in all criminal matters as they are now required by law to do . . . ."

Although we have found no cases which directly discuss the issue presented by your inquiry, a fundamental rule of statutory construction is that the intent of the legislature, when ascertainable, must govern. Brown v. Keill, 224 Kan. 195 (1978), Nordstrom v. City of Topeka, 228 Kan. 336 (1980). A careful reading of K.S.A. 19-247 indicates that the county counselor's duties fall into three broad categories. First, the county counselor is required to render advice and written opinions to the board of county commissioners "on all legal matters as may be referred to him." (Emphasis added.) We believe that the use of the word "all" indicates a legislative intent to require county counselors to advise the board of county commissioners on civil and criminal matters coming before or affecting the board. (This duty is discussed in more detail infra.)

Second, the county counselor is required to represent the county in "all civil suits or actions in which the county is interested." The county counselor's representation of the county is specifically restricted to "matters of civil law."

Third, the county counselor is required to draft contracts and other documents that the board may need to facilitate the business of the county.

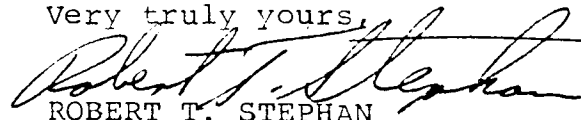
Your opinion request inquires whether "criminal matters" are to be referred to the county attorney. It is well-settled that commencement and control of criminal prosecutions is the exclusive prerogative of the jurisdiction's chief law enforcement officer, i.e., the county or district attorney. State v. Kilpatrick, 201 Kan. 6 (1968). We find no legislative intent to alter this well-settled principle in allowing boards of county commissioners to establish the office of county counselor. Certainly the above-quoted portion of K.S.A. 19-248 clearly indicates a legislative intent to perpetuate the authority of county and district attorneys to commence and control criminal prosecutions.

However, this policy does not preclude county counselors from rendering advice and written opinions to boards of county commissioners regarding matters with criminal implications of concern to the county. As previously noted, the language of K.S.A. 19-247 authorizes the county counselor to advise "the board on all legal matters referred to him." (Emphasis added.) It is our considered opinion that the phrase "all legal matters" as used in K.S.A. 19-247 includes issues which may have criminal implications.

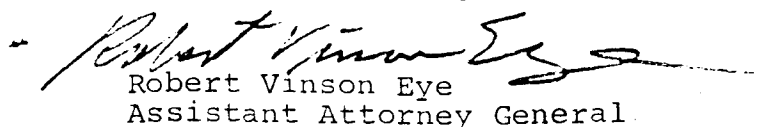
Our conclusion is further supported by the fact that county and district attorneys are essentially independent of boards of county commissioners. As stated supra, county and district attorneys are the chief law enforcement officers in their jurisdictions and as such are not necessarily bound to act consonant with the wishes or at the direction of boards of county commissioners. Heinz v. Shawnee County Comm'rs., 136 Kan. 104 at 105-106 (1932).

In conclusion, K.S.A. 19-247 authorizes county counselors to render advice and written opinions on all legal matters including issues that may have criminal implications. However, this authority is not contrary to statutes requiring county and district attorneys to commence and control criminal prosecutions.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye  
Assistant Attorney General