



STATE OF KANSAS

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January 14, 1983

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ATTORNEY GENERAL OPINION NO. 83- 4

The Honorable James L. Francisco
State Senator, Twenty-Sixth District
604 North First Street
Mulvane, Kansas 67110

Re: Counties and County Officers -- County Commissioners
-- Salaries and Expenses

Synopsis: The establishment of and expenditure of moneys for salaries of county commissioners are statutorily within the exclusive province of a board of county commissioners and there is no expressed or implied statutory authority permitting such salaries to be fixed pursuant to an initiative or referendum process.

Payment of expense claims made by county commissioners must be consistent with the standards set forth in K.S.A. 10-801 and K.S.A. 1981 Supp. 12-105a and 12-105b (Uniform Procedure for Payment of Claims and Other Indebtedness by Municipalities). Cited herein: K.S.A. 10-801, K.S.A. 1981 Supp. 12-105a, 12-105b, 12-3013, K.S.A. 19-101a (as amended by L. 1982, ch. 115, §1), 19-212, 19-229, 45-201.

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Dear Senator Francisco:

You have requested an opinion as to whether an election may be held to determine whether the Sedgwick County Board of County Commissioners may be restricted to a "part-time status" and to specify the amount of compensation a county commissioner receives. Although your question appears to present two issues, there is, in actuality, but one, i.e., whether an election may be

held in Sedgwick County to limit the compensation of county commissioners. We are prompted to this conclusion by the fact that a public officer holds office at all times during his or her term of office, even though less than full-time may be devoted to the duties thereof. For example, a state senator holds his or her office throughout the four-year term of office, even though a state senator's compensation is limited to particular times and circumstances. Thus, since a public officer cannot hold his or her office on a "part-time" basis, we must construe your inquiry regarding the "part-time status" of commissioners as pertaining to the basis for compensating county commissioners for the performance of official duties.

Our research indicates that no statutory authority presently exists for an election to be conducted pursuant to initiative or referendum for the purpose of fixing the county commissioners' salaries. However, the lack of statutory authority in this regard suggests the possibility of enacting local legislation pursuant to county home rule powers, codified at K.S.A. 19-101b, to allow an initiative petition and election. See Clark, State Control of Local Government in Kansas, 20 Kan.L.Rev. 631, 658 (1972) (city home rule powers) and Cf. Missouri Pacific Railroad v. Board of Greeley County Comm'rs., 231 Kan. 225 (1982) (county home rule powers). Notwithstanding legislative silence, we believe such legislation to be beyond the scope of these powers.

In reaching this conclusion, we note that the legislature has not statutorily prescribed the amount of county commissioners' salaries. Rather, by general legislation uniformly applicable to all counties (K.S.A. 19-212 and 19-229), the legislature has vested control over this matter in the various boards of county commissioners. K.S.A. 19-229 states:

"The boards of county commissioners of the several counties of this state shall have exclusive control of all expenditures accruing, either in the publication of the delinquent tax lists, treasurer's notices, county printing, or any other county expenditures." (Emphasis added.)

When K.S.A. 19229 is read in conjunction with K.S.A. 19212, which sets forth the general powers of a county commission, one may conclude that matters relating to financial affairs of the county are the exclusive province of the county commission. See Hackler v. Board of County Commissioners, 189 Kan. 697 (1962) and Att'y Gen. Op. No. 82-85. Therefore, legislation by a board of county

commissioners that would abrogate the board's control over the expenditure of moneys for commissioners' salaries would be contrary to these uniformly applicable statutes. Hence, such local legislation is beyond the scope of county home rule powers, since K.S.A. 19-101a(a) First (as amended by L. 1982, ch. 115, §1) precludes exercise of county home rule powers when such would conflict with an act of the legislature uniformly applicable to all counties.

Your next inquiry states:

"Who is responsible for auditing the Commissioners' expense accounts . . . to include mileage allowance claims? To whom beside the voters, at election time, are the Commissioner's [sic] responsible, and accountable? Who determines what documentation is required for the claims made by the Commissioners?"

We have inquired of the Sedgwick County Controller and have determined that all claims for expenses (including mileage claims) made by commissioners are submitted to the purchasing department. The purchasing department in turn audits such claims and prepares a list of county warrants (warrant register) to satisfy same. This warrant register is then submitted to the board for approval pursuant to K.S.A. 19-212 Second and Sixth, and such approval constitutes the authorization to pay the claims. In our judgment this process is consistent with the requirements set forth in K.S.A. 10-801 et seq. and K.S.A. 1981 Supp. 12-105a and 12-105b (Uniform Procedure for Payment of Claims and Other Indebtedness by Municipalities).

The response to your inquiry regarding the accountability of county commissioners is suggested by the foregoing discussion pertaining to payment of claims made by commissioners. We find no distinction in the relevant statutes between county commissioners and other county officers vis a vis submission of expense claims for payment from county moneys. We would also observe that any individual county commissioner's expense claims are also subject to the scrutiny of the other county commissioners. Moreover, documents and records related to expense claims submitted for payment by county commissioners are official public records which are open to public inspection under K.S.A. 45-201 et seq., thereby facilitating an assessment of commissioners' accountability to their constituencies.

The Honorable James L. Francisco
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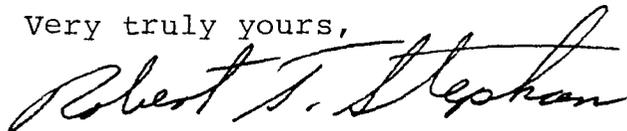
We believe that the response to your inquiry regarding "what documentation is required for claims made by the Commissioners" is provided by K.S.A. 1981 Supp. 12-105b(a) which states:

"All claims against a municipality must be presented in writing with a full account of the items, and no claim shall be allowed except in accordance with the provisions of this section. A claim may be the usual statement of account of the vendor or party rendering a service or other written statement showing the required information."

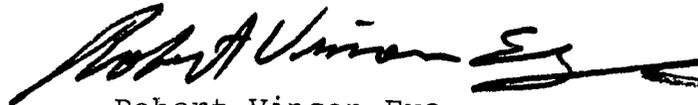
In our judgment the requirements of K.S.A. 1981 Supp. 12-105b(a) provide the standards for the documentation which is required before a claim for expenses may be satisfied.

In conclusion, it is our opinion that the establishment of and expenditure of moneys for salaries of county commissioners are within the exclusive province of a board of county commissioners, and there is no expressed or implied statutory authority permitting such salaries to be fixed pursuant to an initiative or referendum process. It is our further opinion that payment of expense claims made by county commissioners must be consistent with the standards set forth in K.S.A. 10-801 and K.S.A. 1981 Supp. 12-105a and 12-105b (Uniform Procedure for Payment of Claims and Other Indebtedness by Municipalities).

Very truly yours,



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Robert Vinson Eye
Assistant Attorney General

RTS:BJS:RVE:hle