



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 63

James H. Bradley, Chairman  
Robert Markley  
Harvey M. Walquist  
Board of County Commissioners  
Osage County Courthouse  
Lyndon, Kansas 66451

Re: Counties and County Officers -- Miscellaneous  
Provisions -- Place of County Attorney's Office

Synopsis: County attorneys must maintain an office at the  
seat of justice, unless otherwise provided by law  
or the board of county commissioners. Cited  
herein: K.S.A. 19-2601.

\* \* \*

Dear Commissioners:

You have requested the opinion of this office regarding  
whether the Osage County Attorney is required to maintain  
an office in the courthouse or in the alternative, whether  
he may move his office to another town several miles from  
the county seat.

K.S.A. 19-2601 provides:

"Every county officer shall keep his or her  
office at the seat of justice of such county,  
and in the office provided by the county, if  
any such has been provided; and if there be  
none established, then at such place as shall  
be fixed by special provisions of law; or if  
there be no such provisions, then at such  
place as the board of county commissioners  
shall direct, and they shall keep the same  
open during such days and hours as shall be

fixed by the board of county commissioners; and all books and papers required to be in their offices shall be open for the examination of any person; and if any of said officers shall neglect to comply with the provisions of this section, such officer shall forfeit, for each day he or she so neglects, the sum of five dollars (\$5)."

In Henry v. Simon, 128 Kan. 113 (1929), the Kansas Supreme Court addressed the issue of whether R.S. 19-2601 (the predecessor of K.S.A. 19-2601) required the county attorney to keep his office open during business hours specified by the board of county commissioners. The Court opined in this regard as follows:

"We are of the opinion that the county attorney stands in a different position to the public from the other county officers and is not amenable to the provisions of R.S. 19-2601. The county attorney's duties concerning the enforcement of law frequently require him to be absent from his office, attending court, or investigating infractions of the law in various parts of the county; and in many of the counties the law does not make any provision for clerk hire for him, so of necessity the proper discharge of his duties will often require him to lock his office while he attends to them. Moreover, one purpose of the statute in requiring county officers to keep their offices open on week days is that the public may have 'all books and papers' therein open to public inspection. The county attorney has no books and papers of that sort. His books and papers are his quasi private data, which are of no concern to anybody but himself unless or until it is proper, in his discretion, to reveal their contents in court -- all of which goes to show that the county attorney is not one of the public officers to be penalized for not keeping his office open every business day." 128 Kan. at 114-115.

Arguably, the holding in Henry v. Simon, supra, could be construed to exempt the county attorney from all requirements of K.S.A. 19-2601. However, we believe that the holding should be restricted to the facts of the case. The court's rationale is directed specifically to resolving the issue of whether the county attorney is required to keep his/her office open during specified business hours. The controlling policy considerations enunciated by the court are not, in our judgment,

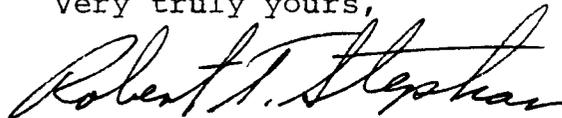
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applicable to the issue of whether the county attorney must maintain an office at the "seat of justice" of the county unless the county commission has provided otherwise, pursuant to K.S.A. 19-2601.

Nothing in this opinion shall be construed as prohibiting a county attorney from maintaining an office for his or her private legal practice in any city in the state.

In summary, it is our judgment, that county attorneys are subject to the provisions of K.S.A. 19-2601, except for the requirement that their offices be open to the public during hours specified by the board of county commissioners. Hence, county attorneys must maintain an office at the seat of justice, unless otherwise provided by law or the board of county commissioners.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye  
Assistant Attorney General

RTS:BJS:RVE:hle