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April 6, 1984

ATTORNEY GENERAL OPINION NO. 84- 30

David J. Harding
Trego County Attorney
515 Russell
Wakeeny, Kansas 67672

Re: Counties and County Officers -- Sheriff -- Deputies
and Undersheriffs; Limitation of Personnel Action

Synopsis: K.S.A. 1983 Supp. 19-805 provides that any personnel action taken by a sheriff under that section shall be subject to county personnel policies and pay plans established by the board of county commissioners for all county employees except elected officials, collective bargaining agreements, civil service regulations, and the sheriff's budget as approved by the county commissioners. In the absence of personnel policies or agreements affecting personnel, a sheriff retains the power to set salaries of his deputies and assistants, including the undersheriff, within the limits of the approved budget.

Cited herein: K.S.A. 19-803; K.S.A. 1983 Supp. 19-805; 79-2925 et seq.

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Dear Mr. Harding:

As Trego County Attorney, and on behalf of J. Dean Ochs, the Sheriff of Trego County, you have requested an Attorney General opinion on the question of whether a county sheriff may establish the salaries of personnel employed in the sheriff's office, in particular you ask whether the sheriff may set the salary of the undersheriff. K.S.A. 19-803 requires a sheriff to appoint an

undersheriff and provides:

"The sheriff of each county shall, as soon as may be after entering upon the duties of his office, appoint some proper person undersheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such undersheriff, or he becomes incapable of executing the same, another shall, in like manner, be appointed in his place." (Emphasis added.)

By contrast, K.S.A. 1983 Supp. 19-805 pertains to a county sheriff's authority to appoint deputies and assistants and provides:

"(a) In addition to the undersheriff, the sheriff also may appoint, promote, demote and dismiss additional deputies and assistants necessary to carry out the duties of the office, for whose official acts the sheriff is responsible. Persons may also be deputized by such sheriff or undersheriff, in writing, to do particular acts. The sheriff and sureties of the sheriff shall be responsible, on the official bond of the sheriff, for the default or misconduct of the undersheriff and deputies.

"(b) Within the limitations of the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners, the sheriff may attend and may require the undersheriff, deputies and any assistants to attend any meeting or seminars which the sheriff determines will be beneficial to the operation of the sheriff's office.

"(c) The sheriff shall submit a budget for the financing of the operation of the sheriff's office to the board of county commissioners for their approval.

"(d) Any personnel action taken by the sheriff under this section shall be subject to the following:

"(1) Personnel policies and procedures established by the board of county commissioners for all county employees other than elected officials;

"(2) any pay plan established by the board of county commissioners for all county employees other than elected officials;

"(3) any applicable collective bargaining agreements or civil service system; and

"(4) the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners." (Emphasis added.)

The language quoted above was enacted in 1983 replacing the former K.S.A. 19-805 which provided:

"Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts and those of his undersheriffs he shall be responsible, and may revoke such appointments at his pleasure; and persons may also be deputed by such sheriff or undersheriff in writing, to do particular acts; and the sheriff and his sureties shall be responsible, on his official bond, for the default or misconduct of his undersheriff and deputies."

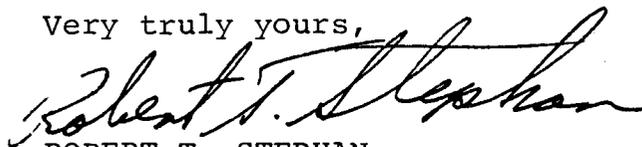
Attorney General Opinion No. 79-279 discussed the former version of K.S.A. 19-805 in addressing the question of whether a board of county commissioners had the power to adjust the salaries of deputy sheriffs after the sheriff's budget had been approved in terms of total dollar expenditure. After reviewing the relevant statutes applicable to the county budget process (K.S.A. 79-2925 through 79-2963), that opinion concluded that "once the sheriff's department budget is set, the way in which the funds are disbursed is solely within the control of the sheriff. Of course, this is qualified by the limits of the budget, civil service regulations (if any) and so forth." That opinion also stated that under the former version of 19-805 the sheriff was given total discretion over the control of his deputies, "and it would be an abridgement of this management authority for the board to retain continuing control over individual items in the sheriff's budget such as the deputies' salaries."

K.S.A. 1983 Supp. 19-805 now provides, clearly and unambiguously, that any personnel action taken by the sheriff "under this section" shall be subject to personnel policies and pay plans established by the board of county commissioners for all county employees. In addition, the statute provides, as did Attorney General Opinion No. 79-279, that the sheriff's personnel actions are subject to civil service regulations or collective bargaining agreements and to the limitations of the sheriff's budget. Thus, any personnel decision a sheriff may make with regard to deputies and assistants, including the decision to hire such deputies and assistants, is subject to the limitations stated in the statute and, in particular, to personnel and pay policies applicable to all county employees. At this juncture, it is important to recall that K.S.A. 19-803 provides that the undersheriff shall be

a general deputy. In that capacity the undersheriff, like all deputies, is affected by K.S.A. 1983 Supp. 19-805. In the absence of such personnel policies, pay plans, civil service regulations, or collective bargaining agreements a sheriff may determine and adjust the salaries of his or her deputies (including the undersheriff) or assistants subject only to the limits of the budget for the financing and operation of the sheriff's office approved by the county commissioners.

We note, however, that the appointment of an undersheriff and the sheriff's authority regarding an undersheriff's continued employment in that capacity do not appear to be controlled by the provisions of K.S.A. 1983 Supp. 19-805 discussed above. Under K.S.A. 19-803, a sheriff is required to appoint an undersheriff who shall hold office only at the pleasure of the sheriff. By contrast the appointment of deputies and assistants is discretionary with the sheriff and although the sheriff has the power to appoint, promote, demote and dismiss such deputies and assistants, any such act may be subject to personnel policies and plans promulgated by the board of county commissioners for all county employees. It does not appear that the board may control or affect, through the enactment of county personnel policies, the appointment of an undersheriff. However, because the undersheriff is also a general deputy, all other personnel decisions affecting the undersheriff, including salary matters, may be subject to the policies and regulations listed in K.S.A. 1983 Supp. 19-805, if such policies exist in the county.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General