



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

June 11, 1984

ATTORNEY GENERAL OPINION 84- 53

Kenneth Moore, Sheriff
Dickinson County Sheriff's Department
109 East 1st Street
Abilene, Kansas 67410

Re: Counties and County Officers -- Sheriff -- Meetings
and Seminars; Discretionary Authority to Send Per-
sonnel

Counties and County Officers -- County Commissioners;
Powers and Duties -- Control of Expenditures

Synopsis: The authority and responsibility for county expenditures is vested in the board of county commissioners as a general rule. An exception to the general rule exists when the expenditure or obligation is necessary for a county official to carry out his or her statutorily imposed duties. K.S.A. 1983 Supp. 19-805(b) authorizes a sheriff, in his or her discretion, to require staff attendance at meetings and seminars which the sheriff determines will be beneficial to the operation of the office, within the limits of the sheriff's budget as approved by the county commissioners. In view of the discretionary nature of the activity, the expenditures authorized by the statute are subject to the general rule. A reconciliation of the interests of the commissioners and the sheriff may be accomplished if the former exercise their general authority by specifically approving a sum in the latter's annual budget to be expended for attendance at such meetings. The sheriff may then exercise his authority under the statute within the limits of the approved budget without seeking prior approval from the com-

missioners. Cited herein: K.S.A. 19-212; 19-229;
1983 Supp. 19-805; 74-5607a.

* * *

Dear Sheriff Moore:

You have requested an opinion on three questions which relate to the expenditure of county funds to send yourself or your deputies and assistants to meetings and seminars which you deem beneficial to the operation of your office as provided in K.S.A. 1983 Supp. 19-805(b).

Your inquiries all relate to the proper interpretation of K.S.A. 1983 Supp. 19-805 which provides in relevant part:

"(b) Within the limitations of the budget for 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.)

Your inquiries concern subsection (b), which provides that, within the limits of the budget approved by the county commissioners for the operation of the sheriff's office, you may require your staff to attend certain meetings and seminars which you deem beneficial to the operation of the office. Specifically, you ask whether K.S.A. 1983 Supp. 19-805(b) limits the general authority of county

commissioners regarding the expenditure of county funds. In your opinion, once your budget is approved by the county commissioners you may expend funds for the purposes stated in subsection (b), provided you do not exceed the limitations of the entire budget as approved by the county commissioners. It is the position of the Dickinson County commissioners and the county attorney that specific discretionary expenditures for attendance at most meetings and seminars must first be approved by the commission. Thus, you also inquire whether the term "budget" in 19-805(b) refers to the entire budget as approved by the commissioners or to the approval of specific items within the budget. (In the past, you point out your budget has been approved in general categories rather than by specific expenditures.) Finally, you ask whether it is necessary to wait until the end of each budget year before expending any sums on meetings or seminars in order to insure that you will stay within your budget.

The authority and responsibility for the control of county expenditures is clearly vested in the board of county commissioners. K.S.A. 19-212 provides in part:

"The board of county commissioners of each county shall have the power, at any meeting:

.....

"Second. To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the county; and when so settled, they may issue county orders therefor, as provided by law.

.....

"To represent the county and have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law."

In addition, K.S.A. 19-229 provides:

"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."

Reading these statutes in conjunction one may easily conclude, in company with the Kansas Supreme Court and previous opinions

of this office, that little remains which is outside the scope of a county commissions power regarding financial matters of the county. See Attorney General Opinion No. 82-85 and Hackler v. Board of County Commissioners, 189 Kan. 697, 698 (1962).

As noted in Attorney General Opinion No. 80-69, however, the power of the county commissioners is not without limitation. An exception to their general authority exists when the expenditure or obligation is necessary in order for an elected official to carry out his or her statutorily imposed duties or obligations. Opinion No. 80-69 concluded that the general rule vesting the county commissioners with authority over county expenditures prevails in the area of optional or discretionary expenditures, but that in some circumstances the general rule must give way to competing statutory provisions.

In addressing the question of whether it is necessary to obtain the prior approval of the commission before expending county funds, the opinion noted that the nature of the expenditure was crucial to answering the question. Thus, in the case of expenditures which are directly necessary for an elected official to perform the specific duties and obligations imposed by state law, he or she need not obtain prior approval from the board of county commissioners for each expenditure. However, in the case of discretionary expenditures, i.e., those which may benefit the office but which may not be properly characterized as "necessary" for the elected official to meet his or her statutory responsibilities, the power of the county commissioners to examine and settle the accounts of the county and to require prior approval of expenditures properly may be exercised.

It is our opinion that a sheriff's authority under K.S.A. 1983 Supp. 19-805(b) to attend or require attendance at meetings or seminars which are deemed beneficial to the operations of the office does not entirely fit into either the "directly necessary" or "discretionary" category. Attendance at certain "meetings or seminars" is required by law. For example, K.S.A. 1983 Supp. 74-5607a requires that law enforcement officers receive a certain number of hours training at the Law Enforcement Training Academy. Expenditures related to such attendance may be made without the prior approval of the county commissioners because the expenditure is clearly necessary for the sheriff to perform specific duties and obligation imposed by state law.

Attendance at meetings and seminars which are not required by state law, but which are permissible under the terms of K.S.A. 1983 Supp. 19-805(b), is discretionary with the sheriff, subject to the limits of the approved budget. Such training meetings and seminars, while not "necessary" in the strict sense of the term, may be extremely important and beneficial to the efficient

and proper operation of the sheriff's office. Expenditures for such meetings would appear to fall somewhere between the absolute needs of the sheriff's office in relation to his or her statutory duties and the power of the county commissioners to control county expenditures.

Attorney General Opinion No. 82-69 concluded that expenditures which may not be categorized either as necessary or not necessary for an official to carry out statutory functions (and the legal authority and responsibility inherent in those functions) do not evince a clear exception to the general rule that county expenditures are the responsibility of the board of county commissioners. That opinion went on to note, however, that as a practical matter a policy of "shared discretion" (i.e., a grant of limited authority regarding expenditures from the board of county commissioners to the official) would be appropriate to encourage efficiency in county government. Such a policy of shared discretion would permit a county official to properly manage his or her office while the county commissioners retain annual budget control and consequently, the overall fiscal management of the county.

In our opinion, such a policy of "shared discretion" regarding attendance at meetings and seminars is not only prudent but required by the terms of K.S.A. 1983 Supp. 19-805(b). That section clearly provides that the sheriff has the authority to determine which meetings and seminars will be beneficial to the operation of the office. Of course, that discretion is subject to the overall budget approval authority of the board of county commissioners as well as to other limitations which may be imposed by the commissioners. These other limitations include pay plans and personnel policies (which may well include travel policies) applicable to all county employees, civil service programs and, of course, the limits of the approved budget. See K.S.A. 1983 Supp. 19-805(c).

In its original version, this legislation provided that certain elected county officials could make personnel decisions regarding their staff and require attendance at certain meetings or seminars. (See 1983 Senate Bill 46, as introduced by Senator Norvell.) After hearing substantial evidence supporting and opposing the bill, the Senate Committee on Governmental Organization added the language discussed above which limits that discretion to the parameters of the county commissioners' general authority over county budgets. The phrase in K.S.A. 19-805(b) which provides that the sheriff's authority to require attendance at meetings and seminars is subject to the approved "budget for the financing of the operations of the sheriff's office" logically refers to the entire budget and not to specific items which may be a part of the budget.


Clearly, there are substantial interests on both sides of this situation. The first is the power which the county commissioners

exercise over county expenditures. The second is the discretion granted to a sheriff to determine which meetings and seminars are important and beneficial to the operations of the office. A reconciliation of these interests can only serve to promote efficiency in county government. In our opinion the policy of shared discretion advocated by Opinion No. 80-69 can effect such a reconciliation. This could be accomplished if the county commissioners would approve a specific sum for attendance at meetings and seminars in each annual budget. As a result, the county commissioners could, through their budgetary authority, control the sums to be expended for such a purpose and the sheriff, in turn, could exercise the authority to determine which meetings and seminars are useful and important to the operation of the office. If such a sum is specifically approved in the sheriff's budget, there would be no need for the sheriff to seek approval from the commission before expending such sums. In our opinion, this is the only way to reconcile the competing interests inherent in K.S.A. 1983 Supp. 19-805(b).

If, however, the county commissioners approve a budget in general terms which does not include specific sums for travel and then require prior approval before the sheriff may expend money for meetings and seminars, the grant of authority to the sheriff found in 19-805(b) is effectively cancelled. We do not believe that this was the intention of the legislature.

In conclusion, the authority and responsibility for county expenditures is vested in the board of county commissioners as a general rule. An exception to the general rule exists when the expenditure or obligation is necessary for a county official to carry out his or her statutorily imposed duties. K.S.A. 1983 Supp. 19-805(b) authorizes a sheriff, in his or her discretion, to require staff attendance at meetings and seminars which the sheriff determines will be beneficial to the operation of the office, within the limits of the sheriff's budget as approved by the county commissioners. In view of the discretionary nature of the activity, the expenditures authorized by the statute are subject to the general rule. A reconciliation of the interests of the commissioners and the sheriff may be accomplished if the former exercise their general authority by specifically approving a sum in the latter's annual budget to be expended for attendance at such meetings. The sheriff may then exercise his authority under the statute within the limits of the approved budget without seeking prior approval from the commissioners.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary F. Carson
Assistant Attorney General