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December 1, 1986

ATTORNEY GENERAL OPINION NO. 86- 166

Gene Marks, Sheriff
Barton County Sheriff's Office
P.O. Box 87
Great Bend, Kansas 67530

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

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

Synopsis: K.S.A. 1985 Supp. 19-805(b) authorizes a sheriff,
in his or her discretion, to require staff
attendance at meetings and seminars which the
sheriff determines to 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 under
subsection (b) are subject to the general rule that
the authority and responsibility for county
expenditures is vested in the board of county
commissioners. A policy of "shared discretion"
could effectively reconcile the interests of the
sheriff and the commissioners in regard to this
statute, if the commissioners would approve a
specific sum in the sheriff's budget each year to
be expended for attendance at meetings and
seminars. In this way, the sheriff could exercise
his or her authority under the statute within the
limits of the approved budget without seeking prior

approval from the commissioners. Cited herein:
K.S.A. 19-212; 19-229; K.S.A. 1985 Supp. 19-805;
74-5607a.

* * *

Dear Sheriff Marks:

As sheriff of Barton County, you request our opinion on a question which relates 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. 1985 Supp. 19-805(b).

Your inquiry relates to the proper interpretation of K.S.A. 1985 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 inquiry concerns 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 inquire as to whether the board of county commissioners can legally refuse to pay the expenses of an officer attending a meeting or seminar, whether in or out of state, if said expenses do not exceed the sheriff's budget previously approved by the county commissioners for a given fiscal year.

Initially, we note that subsection (b) draws no distinction between meetings or seminars held within the state versus those held outside of the state. Therefore, the conclusion reached in this opinion will apply to officers regardless of the location of the meeting or seminar which they wish to attend.

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.

.....

"Sixth. 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." (Emphasis added.)

A review of these statutes, along with a Kansas Supreme Court decision and several previous opinions of this office, leads one to conclude that little remains outside the scope of the county commission's 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). However, Attorney General Opinion Nos. 80-69 and 84-53 concluded that the power of the county commissioners is not without limitation.

Opinion No. 80-69 found that as a general rule the board of county commissioners is vested with the authority and responsibility for overseeing the expenditure of county funds. However, the opinion also noted that an exception to the general rule 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. Therefore, Opinion No. 80-69 concluded that while the commission's general authority over county expenditures prevails in the area of optional or discretionary expenditures, circumstances may exist where the general rule must give way to competing statutory provisions which require expenditure of county funds. Accordingly, determining the nature of the expenditure is crucial in deciding whether it is necessary to obtain the prior approval of the commission before expending county funds.

In Attorney General Opinion No. 84-53, we were asked whether the language in subsection (b) limits the general authority of county commissioners regarding the expenditure of county funds. After reviewing the conclusions reached in Opinion No. 80-69, Opinion No. 84-53 found that a sheriff's authority under subsection (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.

The opinion noted that attendance at certain meetings or seminars is required by law (for example, see K.S.A. 1985 Supp. 74-5607a), while attendance at other meetings or

seminars is discretionary (K.S.A. 1985 Supp. 19-805), and is therefore subject to the limits of the approved budget. Such discretionary meetings or seminars may be important to the efficient operation of the sheriff's office even though they are not "necessary" in the strict sense of the term. Thus, Opinion No. 84-53 concluded that 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.

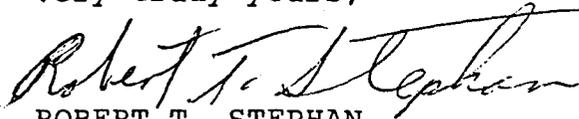
We concur with the conclusions reached in Attorney General Opinion Nos. 80-69 and 84-53. In light of our earlier interpretation that these funds are neither "directly necessary" nor "discretionary," it is our opinion that a policy of "shared discretion" (i.e. a grant of limited authority regarding expenditures from the board of county commissioners to the official) is both appropriate and required by the terms of K.S.A. 1985 Supp. 19-805(b). See Attorney General Opinion Nos. 80-69 and 84-53. Shared discretion could effectively reconcile the competing interests of the county commissioners and the sheriff under subsection (b). If the commission would approve a specific sum for attendance at meetings and seminars in each annual budget, there would be no need for the sheriff to seek approval from the commission before expending such sums. Thus, the sheriff would retain authority to manage his or her office, while the county commissioners would retain annual budget control and consequently, the overall fiscal management of the county.

We note that the original version of K.S.A. 1985 Supp. 19-805(b) granted much greater personnel decision making authority to certain elected officials. (See 1983 Senate Bill No. 46, as introduced by Senator Norvell.) However, the Senate Committee on Governmental Organization added the present day language which limits the sheriff's discretion to the parameters of the county commissioners' general authority over county budgets. At the same time, we believe that a sheriff must have control over the funds allocated to his or her office by the county commission in order to effectively perform his or her job. If the 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 K.S.A. 1985 Supp. 19-805(b) is effectively cancelled. In that we do not believe this was the intention of the legislature, it is our opinion that the only means of reconciling the competing interests of the sheriff

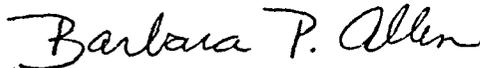
and the commissioners in regard to funds expended under subsection (b) is through the policy of "shared discretion" described above.

In summary, K.S.A. 1985 Supp. 19-805(b) authorizes a sheriff, in his or her discretion, to require staff attendance at meetings and seminars which the sheriff determines to 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 under subsection (b) are subject to the general rule that the authority and responsibility for county expenditures is vested in the board of county commissioners. A policy of "shared discretion" could effectively reconcile the interests of the sheriff and the commissioners under this statute, if the commissioners would approve a specific sum in the sheriff's budget each year to be expended for attendance at meetings and seminars. In this way, the sheriff could exercise his or her 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



Barbara P. Allen
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RTS:JLM:BPA:crw