



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 173

Mr. Ronald S. Reuter
Roeland Park City Attorney
P.O. Box 7933
Overland Park, Kansas 66207

Re: Cities of the Second Class--Elections--Elective and
Appointive Officers; Terms; Compensation

Synopsis: Pursuant to ordinances of the city of Roeland Park, the duties of the city attorney must be prescribed by ordinance passed by the governing body. Accordingly, where no ordinance prescribes that the city attorney shall represent city officers who are sued in an individual capacity (for actions they have taken in their official capacities), the city attorney may refuse to represent such city officials, and such refusal is not a cause for removal from office. If, at the direction of the governing body, and in the absence of any fee agreement with an individual official, the Roeland Park City Attorney voluntarily undertakes the defense of a city officer who has been sued in an individual capacity, it is our opinion that he is to be compensated at the hourly rate established for services provided for the city. Cited herein: K.S.A. 1987 Supp. 75-6108.

* * *

Dear Mr. Reuter:

As city attorney of Roeland Park, you request our opinion concerning your obligation to represent city officials who are

sued in an individual capacity. Specifically, your questions are as follows:

"1. Is a City Attorney obligated under the law to represent city officials that are sued in an individual capacity for actions they have taken in their official capacities if such defense is directed by the City Council?

"2. In the absence of an apparent conflict of interest, is a City Attorney who refuses to represent a city official subject to removal from office for cause?

"3. Is a City Attorney, who is not an employee of the city, who at the direction of the City Council undertakes the defense of a city officials who have been sued in an individual capacity for actions taken in an official capacity, obligated to provide that defense at the hourly rate established for the City Attorney for services provided for the City."

In regard to the first and second questions quoted above, Charter Ordinance No. 5 of the city of Roeland Park prescribes that the city council "shall by ordinary ordinance specify the duties and compensation" of the city attorney, and section 1-312 of the city code sets forth the duties of the city attorney as follows:

"CITY ATTORNEY. The city attorney shall:

"(a) Attend meetings of the city council when so directed to attend by the city council;

"(b) Advise the city council and all officers of the city upon such legal questions affecting the city and its offices as may be submitted to him or her;

"(c) When requested by the city council give opinions in writing upon any such questions;

"(d) Draft such ordinances, contracts, leases, easements, conveyances and other instruments in writing as may be submitted to him or her in the regular transaction of affairs of the city;

"(e) Approve all ordinances of the city as to form and legality;

"(f) Attend planning commission and board of zoning appeals meetings when so directed by the boards;

"(g) Prosecute municipal violations and all other matters before the municipal court, except when such violations or matters are prosecuted by the assistant city attorney.

"(h) Perform such other duties as may be prescribed by the governing body and the Kansas statutes."

Additionally, another ordinance provides that the Roeland Park City Attorney shall be compensated "\$60.00 per hour for services provided the city."

In construing an ordinance which prescribes the duties of a city attorney, the courts will not "strain words to exclude anything a city attorney ought ordinarily to do." Johnson v. Winfield, 75 Kan. 832, 833 (1907). However, we are unaware of any Kansas case which states that a city attorney should, as an inherent duty of his office, defend officers who are sued in their individual capacity. In this regard, subsection (b) of K.S.A. 1987 Supp. 75-6108 prescribes that a city may provide for the defense of city officers by the city attorney, by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense.

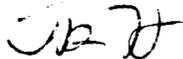
In regard to defense of city officials in Roeland Park, it is our opinion that charter ordinance no. 5 of the city of Roeland Park and section 1-312 of the city code are ordinances which are in pari materia and therefore must be read to together and harmonized. See Capital Services, Inc. v. Dahlinger Pontiac-Cadillac, 232 Kan. 419, 422 (1982); Phillips v. Vieux, 210 Kan. 612, 617 (1972). Accordingly, in light of the requirement of charter ordinance no. 5 that duties of the city attorney shall be specified by ordinary ordinance, subsection (h) of section 1-312 of the city code must be read as authorizing the governing body to prescribe "other duties" of the city attorney by ordinance. Where no ordinance prescribes that the city attorney shall represent city officers who are sued in an individual capacity, it is our opinion that the city attorney may refuse

to represent such city officials, and such refusal is not a cause for removal from office.

In response to your third question, it is our opinion that if, at the direction of the governing body (such direction being other than by ordinance), and in the absence of any fee agreement with an individual officer, the Roeland Park City Attorney undertakes the defense of a city official who has been sued in an individual capacity, he is to be compensated at the hourly rate established for service provided for the city.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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