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ATTORNEY GENERAL OPINION NO. 90- 88

Howard Schwartz
Judicial Administrator
301 W. 10th St.
Kansas Judicial Center
Topeka, Kansas 66612-1507

Re: Courts -- District Courts; Miscellaneous Provisions
-- Parole and Court Services Officers; County
Commissioners Responsible for Certain Expenses of
District Court Operations; Travel Expenses of Court
Services Officers

Synopsis: Pursuant to K.S.A. 20-346a and 20-348, travel
expenses incurred by court services officers should
be included in the county budget for the operation
of the district court rather than paid by the state
as compensation to the individual court services
officer. Cited herein: K.S.A. 19-101a; 20-341;
20-346a; 20-348; 20-349; 20-359; 75-3201; 75-3203;
75-3203a.

* * *

Dear Mr. Schwartz:

As Judicial Administrator for the Supreme Court of Kansas you request our opinion on the payment of travel expenses incurred by court services officers of the district court. You call our attention to Supreme Court Administrative Order No. 24, Attorney General Opinion No. 80-32, and K.S.A. 75-3203, 75-3203a, 20-348 and 20-349. We have also received correspondence from the Riley county counselor, which cites

K.S.A. 20-346a and contains arguments as to why the travel expenses of court services officers should be paid by the state rather than the county.

K.S.A. 20-348 sets forth the basic rule concerning payment of district court expenses: "Except for expenses required by law to be paid by the state, from and after January 10, 1977, the board of county commissioners of each county shall be responsible for all expenses incurred for the operation of the district court in the county." See Board of Osage County Commissioners v. Burns, 242 Kan. 544, 549 (1988). We must therefore determine if the law requires the state to pay the travel expenses of court services officers. If it does not, K.S.A. 20-348 requires the county to be responsible for all expenses incurred for the operation of the court.

The county may argue that court services officers, as employees of the state, do not incur travel expenses on behalf of the county, and therefore, court services officers should look to their employer (the state) for reimbursement of travel expenses. However, district courts are state courts and K.S.A. 20-348 requires counties to participate in the financial support of such courts. As discussed in Attorney General Opinion No. 81-134, Kansas counties exist only for public purposes connected with the administration of government. Board of County Commissioners v. Lewis, 203 Kan. 188, 191 (1969). A county is part of the governmental mechanism employed to carry on the affairs of the state. Harling v. Wyandotte County Commissioners, 110 Kan. 542 (1922). K.S.A. 19-101a(3) limits county power in matters involving the courts. K.S.A. 20-348, 20-341, 20-349 and 20-359 all contain certain court related duties imposed upon counties. See also Attorney General Opinions No. 83-76, 82-126, 79-114, 80-27 and 79-226. Prior to court unification (see e.g. K.S.A. 20-346a) counties paid salaries to many court employees. In performing such court related duties the county apparently acts as an arm of the state rather than a disinterested or separate third party. We cannot address the policy arguments concerning the division of financial burden resulting from the operation of district courts. K.S.A. 20-348 clearly requires counties to pay certain court related expenses. We must determine which governmental entity has the duty to pay the travel expenses of court services officers.

Reimbursement for travel expenses incurred by state employees is discussed by K.S.A. 75-3201 et seq. which establish the procedures and authority involved in payment of travel expenses incurred by state officials or employees. See

Attorney General Opinion No. 80-32. However, this enactment does not discuss the responsibility for payment of travel expenses incurred by state employees who work as court personnel. Rather, K.S.A. 75-3201 et seq., and regulations adopted pursuant to that authority, set forth the procedures and amounts for payment of such expenses. We have found no authority dictating that state establishment of travel expense procedures and rates results in a limitation upon the state prohibiting the state from requiring such payments to be made by another governmental entity.

K.S.A. 20-346a states:

"The supreme court shall prescribe the qualifications required of persons appointed as court services officers of the district courts. The compensation of court services officers of the district courts shall be paid by the state either in accordance with the compensation plan adopted by the supreme court or as may be otherwise specifically provided by law."
(Emphasis added).

Absent a statutory requirement to the contrary, K.S.A. 20-348 requires the county to pay costs connected with operation of the district court, unless the state is required to pay for a specific expense. K.S.A. 75-3201 et seq. do not require the state to pay travel expenses to court services officers, but merely establish a right to travel expense payments, and the procedures and rates for such payments. K.S.A. 20-346a requires the state to pay compensation to court services officers. We find no other statute specifically addressing payments to court services officers. The issue therefore becomes whether travel expenses are compensation.

Compensation is generally defined as:

"Indemnification: payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Remuneration for services rendered, whether in salary, fees, or commissions. Consideration or price of a privilege purchased." Blacks Law Dictionary 256 (5th ed. 1979).

"The terms 'compensation' when employed in reference to the remuneration of public officers means pay for doing all that may be required of the official, whether it is in the form of a fixed salary, or fees, or commissions, or perquisites of whatsoever character." 63A Am.Jur.2d Public Officers and Employees, § 431 (1984).

These general definitions of compensation are broad enough to include travel expenses. However, case law on the issue is not unanimous.

In those cases holding that compensation includes travel expenses there is usually a constitutional provision limiting payment of compensation to public officials. See Annot. 5 A.L.R.2d 1154 (1948). Pursuant to constitutional limitations, some courts have invalidated attempts to increase salaries and disallowed a set amount for the stated purpose of travel expenses. See e.g. In Re Interrogatories by Governor, 429 P.2d 304 (Colo. 1967). Garbenis v. Elrod, 454 N.E.2d 719 (Ill. 1983), stated that compensation is money that accrues personally to one who has a private claim thereto, that is, salary or expense reimbursement. State v. Turner, 117 Kan. 755 (1925), involved a \$5.00 per day expense allowance which was to be paid to the lieutenant governor. A Kansas constitutional provision limited changes in compensation to the lieutenant governor during his term, and thus, the Kansas Supreme Court declared the \$5.00 expense allowance unconstitutional. The court did not address reimbursement for travel expenses actually incurred. Rather, the court examined a \$5.00 automatic increase in what the lieutenant governor received each day.

Travel expenses paid as reimbursement for actual amounts expended by a public employee are often excluded from the definition of compensation. Annot. 106 A.L.R. 779, 782 (1937); Ware v. Battlecreek, 167 N.W. 891 (1918); Hoppe v. State, 469 P.2d 909, 912 (1970) (compensation does not embrace nor include appropriate reimbursement for travel expenses incurred for subsistence in lodging); Spearman v. Williams, 415 P.2d 597, 601 (Ok. 1966); Kirkwood v. Soto, 25 P. 488, 489 (Ca. 1891); Jaspers v. West, 125 P.2d 694, 696 (Wa. 1942); Kogel v. McGoldrick, 33 N.Y.S. 2d 122, 128 (N.Y. 1942); State v. Yelle, 110 P.2d 162, 171 (Wa. 1941); Earhart v. Frohmiller, 178 P.2d 436, 438 (Az. 1947); Opinions of the Justices, 64A 2d 204, 206 (N.H. 1949). DeSutter v. South Moline Tp. Bd.,

449 N.E. 2d 1355 (Ill. 1983) declared that the action of a township board in paying lump sum expenses to township officials did not violate a constitutional provision that prohibited increases or decreases in salary during the term of the officer. See also 15A Am.Jur.2d Clerks of Court, § 13 (1976); 63A Am.Jur.2d Public Officers and Employees, § 461 (1984).

There appears to be no clear majority defining compensation to include or exclude travel expenses. Those cases defining compensation to include travel expenses almost entirely concern a state constitutional provision and travel expenses routinely included in the regular payment made to a public official, i.e. the payment is made even if that official does not actually travel. The situation at hand concerns reimbursement for travel expenses actually incurred.

Tax law provides some guidance concerning the nature of reimbursement for actual travel expenses. Per diem allowances may not constitute wages or be subject to withholding if employees are engaged in work at a distance from the regular work place. Stubbs, Overbeck and Associates, Inc. v. U.S., 445 F.2d 1142 (5th Cir. 1971). Payments by an employer for an employee's trips to annual conventions were not defined as wages subject to withholding where the convention served the employer's business purposes and were not simply pleasure trips for the employees and their spouses. Peoples Life Insurance Company v. United States, 373 F.2d 924 (Ct. Cl. 1967). See also Central Illinois Service Co. v. U.S., 435 U.S. 21, 55 L.Ed.2d 82 (1979); 33 Am.Jur.2d Federal Taxation, ¶ 1095, 6923, 3560 and 3342 (1990). Thus, federal lawmakers have defined wages to exclude certain business related travel expense payments to employees.

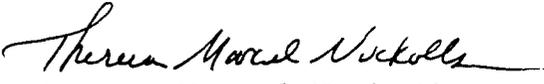
Legislative history surrounding enactment of K.S.A. 20-346a evidences a court system wherein the county previously paid the salary and travel expenses of probation officers. Pursuant to enactment of K.S.A. 20-346a, the state now pays the salary of these individuals. However, with one exception, counties have continued to pay court services officers' travel expenses. The state legislature does not appropriate money for state payment of travel expenses incurred by court services officers engaged in court related travel. If the legislature intended K.S.A. 20-346a to mandate that the state pay travel expenses to these individuals it would be reasonable to expect that, absent a clear statement of intent in the statute or the history surrounding it's enactment, the

legislature would supply funds to the state for payment of such expenses.

Given the lack of a clear common law rule, the reimbursement nature of the payments for travel expenses actually incurred, the treatment of such reimbursements under tax law, and the fact that legislative appropriations for compensation to court personnel have traditionally not included amounts for such travel expenses, it is our opinion that the legislature did not intend to define compensation, as set forth in K.S.A. 20-346a, to include travel expenses incurred by court services officers. Moreover, K.S.A. 75-3201 et seq. do not establish which governmental entity must pay for travel expenses, but rather, establish the authority, duty and rates associated with such payments. Thus, it is our opinion that travel expenses paid to court services officers are not compensation, but rather, are expenses related to the operation of the district court and should therefore be paid by the county pursuant to K.S.A. 20-348. However, such payments remain subject to the budgetary control of the board of county commissioners, as specified in K.S.A. 20-349. Thus, a county may establish a reasonable budget which includes such travel expenses. Court services officers would then be limited to expenditures that do not exceed such budgeted amounts unless otherwise subsequently approved by the board of county commissioners. See Attorney General Opinion No. 83-76.

Very truly yours,


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