



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 40

Leigh Hood
Ford County Attorney
Courthouse
P.O. Box 1047
Dodge City, Kansas 67801

Re: Counties and County Officers -- County
Commissioners -- County Equipment Reserve Fund;
Purpose of the Fund

Counties and County Officers -- County Clerk --
Duties and Authority

Synopsis: K.S.A. 19-119 allows the board of county
commissioners latitude in authorizing appropriate
expenditures by the use of the term "any other
equipment or personal property." The county clerk
does not have the authority nor the responsibility
of making sure that the orders issued by the board
of county commissioners are wise or proper as long
as the expenditures are within the scope of their
authority. Cited herein: K.S.A. 19-119; 19-305;
19-306.

* * *

Dear Mr. Hood:

As Ford county attorney you request our opinion as to what
purchases would constitute a proper expense from the Ford
county equipment reserve fund.

On December 28, 1987, the Ford county board of commissioners, pursuant to Resolution No. 87-10 and in accordance with K.S.A. 19-119 established an equipment reserve fund. K.S.A. 19-119 and Ford county resolution no. 87-10 set out that the word equipment:

"shall include machinery, vehicles and any other equipment or personal property including, but not limited to, computer hardware and software, which the county is authorized to purchase for municipal purposes."

The Ford county board of commissioners would like to purchase the following items but have met with resistance from the county clerk who refuses to process the claims because she deems them an improper use of the fund. You seek our opinion regarding whether these are appropriate expenditures from the equipment reserve fund.

- New heating equipment
- New air conditioning equipment
- New plumbing fixtures, e.g., faucets and handles
- New toilets
- New bathroom sinks
- New bathroom partitions
- New "plumbing equipment"
- New "electrical equipment" e.g., wiring, conduit, switches
- New light fixtures
- New ceiling tiles
- New floor tile
- New carpet
- New wallpaper for some walls
- New, energy efficient window apparatus
- Some new doors
- Some new cabinets
- New handicapped entry equipment
- Construction materials

K.S.A. 19-119 allows for expenditures that encompass "machinery, vehicles and any other equipment or personal property including but not limited to, computer hardware and software." (Emphasis added). Since such language is very broad and research into the legislative history of K.S.A. 19-119 does not show that the phrase was meant to cover only a certain, few items, we interpret this statute to authorize expenditures for anything that fits within the definition of

equipment or personal property, if the item is something the county is authorized to purchase for municipal purposes.

In regard to the county clerk's refusal to process the claims for the aforementioned items from the equipment reserve fund, we must look to the powers and duties of the county clerk.

"It shall be the general duty of the county clerk: First, to record, in a book to be provided for that purpose, all proceedings of the board; second, to make regular entries of their resolutions and decisions in all questions concerning the raising of money; third, to record the vote of each commissioner on any question submitted to the board, if required by any member; fourth, sign all orders issued by the board for the payment of money; fifth, to preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required of him by law." K.S.A. 19-305.

Also, K.S.A. 19-306 states "[i]t shall be the duty of such clerk to designate, upon every account which shall be audited and allowed by the board, the amount so allowed. . . ."

In The State, ex rel. v. Leisure, 42 Kan. 272, 274 (1889), the court in discussing the duties of a county clerk and if the clerk could be subject to forfeiture of his office due to a large, questionable expense stated:

"He is merely a clerk in such cases for the board; having no supervisory control over, and not responsible for their action, it is not for him to determine whether they act wisely or unwisely, prudently or imprudently, legally or illegally, at least so long as they keep within the scope of their authority."

In conclusion, it is our opinion that K.S.A. 19-119 allows the board of county commissioners latitude in authorizing appropriate expenditures by the use of the term "any other equipment or personal property." The county clerk does not have the authority nor the responsibility of making sure that the orders issued by the board of county commissioners are

wise or proper as long as the expenditures are within the scope of their authority.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary Jane Stattelma
Assistant Attorney General

RTS:JLM:MJS:bas