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ATTORNEY GENERAL OPINION NO. 2015- 8

The Honorable John Carmichael
State Representative, 92nd District
State Capitol, 451-S
300 SW 10th Avenue
Topeka, Kansas 66612

Re: Courts—Supreme Court—Budget for the Judicial Branch of State Government; Preparation; Submission

State Departments; Public Officers and Employees—Department of Administration—Governor's Budget Report; Contents; Submission to Legislature

Synopsis: K.S.A. 2014 Supp. 75-3721(f) requires that the Judiciary's budget estimate as submitted to the Director of the Budget shall be included in the governor's budget report. However, K.S.A. 2014 Supp. 75-3721(f) does not vitiate the governor's obligation pursuant to K.S.A. 2014 Supp. 75-3721(b) to include a budget message, a recommendation, and draft legislation in the *Governor's Budget Report* on each state agency budget estimate as a starting point for the Legislature in the appropriations process. Cited herein: K.S.A. 20-158; 75-3701; 75-3716; K.S.A. 2014 Supp. 75-3717; 75-3718; 75-3721.

* * *

Dear Representative Carmichael:

As State Representative for the 92nd District, you ask our opinion on two questions related to the interaction between K.S.A. 20-158 and K.S.A. 2014 Supp. 75-3721(f). We believe K.S.A. 2014 Supp. 75-3718 is also legally significant to your question. The pertinent parts of those statutes are set forth below:

K.S.A. 20-158: The chief justice shall submit to the legislature¹ the annual budget request for the judicial branch of state government for inclusion in the annual budget document for appropriations for the judiciary. Such budget shall be prepared and submitted in the manner provided by K.S.A. 75-3716 and 75-3717, and amendments thereto

K.S.A. 75-3718(c): The *director of the budget* shall not revise the budget estimate for the judicial branch of state government that is submitted pursuant to K.S.A. 20-158, and amendments thereto.²

K.S.A. 2014 Supp. 75-3721(f): The budget estimate for the judicial branch of state government as submitted to the director of the budget pursuant to K.S.A. 20-158, and amendments thereto, shall be *included* in the governor's budget report.³

K.S.A. 2014 Supp. 75-3717(a) requires every state agency to "file with the division of the budget its budget estimates for the next fiscal year, and amendments and revisions. . . ." A state agency is defined as "any state office or officer, department, board, commission, institution, bureau or agency, division or unit within any office, department, board, commission or other state authority or any person requesting a state appropriation."⁴ We believe the Judiciary is a state agency for purposes of K.S.A. 75-3717.

In your first question, you ask:

Is the governor required to submit the Judiciary's budget directly to the Legislature without changes by the Director of the Budget and must it be included in *The Governor's Budget Report* as submitted?

In our opinion, the plain language of the statutes requires the following actions to occur in this order. First, when K.S.A. 20-158, K.S.A. 2014 Supp. 75-3717(a), and K.S.A. 75-3718(c) are read together, the chief justice of the Kansas Supreme Court is required to prepare and submit the judiciary's budget estimate to the Legislature. The judiciary's budget estimate is deemed submitted to the Legislature when it is submitted to the director of the budget for inclusion in the governor's budget report as provided by K.S.A. 75-3716 and K.S.A. 2014 Supp. 75-3717. In addition, like all state agencies, the Judiciary must submit a copy of its budget estimate directly to the Legislature through the Legislative Research Department as required by K.S.A. 2014 Supp. 75-3717(b).

¹ Prior to the 2003 amendments to this statute, the chief justice submitted the annual budget to the *director of the budget*, rather than to the Legislature. L. 2003 Ch. 99, § 20. The remainder of the law was unchanged.

² Emphasis added.

³ Emphasis added. Because K.S.A. 75-3718(c) and K.S.A. 2014 Supp. 75-3721(f) both refer to K.S.A. 20-158, we presume that the term "budget request" in K.S.A. 20-158 is intended to be synonymous with the term "budget estimate" in K.S.A. 75-3718(c) and K.S.A. 2014 Supp. 75-3721(f).

⁴ K.S.A. 75-3701(3).

Second, pursuant to K.S.A. 75-3716 and K.S.A. 2014 Supp. 75-3717, the director of the budget has certain duties with regard to a state agency's budget estimate, but pursuant to K.S.A. 75-3718(c), the *director of the budget* is not permitted to revise the judiciary's budget estimate. The obligation of the director of the budget is to include the judiciary's budget estimate in the *Governor's Budget Report* without revision.

Third, the governor is required by K.S.A. 2014 Supp. 75-3721(f) to *include* the judiciary's budget estimate, as submitted by the judiciary to the director of the budget, in the *Governor's Budget Report*. However, the governor is not relieved of the requirements of K.S.A. 2014 Supp. 75-3721(b), which provides:

The budget report of the governor shall be set up in three parts, the nature and contents of which shall include the following:

(1) Part one shall consist of a budget message by such governor, including the governor's recommendations with reference to the fiscal policy of the state government for the current fiscal year and the ensuing fiscal year, describing the important features of the budget plan for each of the fiscal years included, embracing a general budget summary setting forth the aggregate figures of the budget so as to show the balanced relation between the total proposed expenditures and the total anticipated income for the current fiscal year and the ensuing fiscal year, with the basis and factors upon which the estimates were made, and the means of financing the budget plan for the each of the fiscal years included, compared with the corresponding figures for at least the last completed fiscal year, and the director of the budget shall prepare the figures for the governor for such comparisons.

....

(2) Part two shall embrace the detailed budget estimates for each of the fiscal years included, both of expenditures and revenues, showing the requests of the state agencies, if any, *and the governor's recommendations thereon*. . . .⁵

(3) *Part three shall consist of a draft of a legislative measure or measures reflecting the governor's budget for all of the fiscal years included in the budget report.*⁶

Thus, the governor is required to make a recommendation on state agencies' budget requests and draft legislative measures reflecting the recommendations. As noted above, the Judiciary is a state agency for purposes of K.S.A. 75-3701(3). Unlike K.S.A. 75-3817(c), there is nothing in K.S.A. 2014 Supp. 75-3721 that prohibits the governor from making recommendations in the *Governor's Budget Report* regarding the budget submission of any state agency, including the Judiciary. Thus, although the *director of the budget* may not revise the judiciary's budget estimate, and such budget estimate must be included in the

⁵ Emphasis added.

⁶ Emphasis added.

Governor's Budget Report, the governor is bound by no such prohibition. Further, the language in K.S.A. 20-158 and K.S.A. 2014 Supp. 75-3721(f) does not vitiate the mandatory requirements imposed on the governor regarding what is required to be in the *Governor's Budget Report*. Therefore, as the statutes are written, the governor is required to make a recommendation in the *Governor's Budget Report* and to draft legislation on each state agency budget estimate as a starting point for the Legislature in the appropriations process.

Thus, each year when the Legislature convenes to consider appropriations for the judiciary pursuant to Article 2, Section 24, of the Kansas Constitution, it should have before it all of the following: (1) the *Governor's Budget Report* containing the budget estimate of the judiciary as submitted by the chief justice to the Division of the Budget pursuant to K.S.A. 75-3717(a), unchanged by the director of the budget as required by K.S.A. 75-3718(c), and included as submitted and without change in the *Governor's Budget Report* as required by K.S.A. 75-3721(f); (2) a copy of the budget estimate prepared by the chief justice and submitted directly to the Legislature through the Legislative Research Department as required by K.S.A. 75-3717(b); and (3) the governor's recommendations for the judiciary budget as required by K.S.A. 75-3721(b)(2). Presumably, the information presented to the legislature pursuant to (1) and (2) would be identical, while the information presented pursuant to (3) may be identical or may differ. Under this statutory process, the legislature has before it both the chief justice's unaltered recommendation for the judiciary budget and the governor's recommendation for the judiciary budget when it makes appropriations decisions regarding the judiciary.

In your other question, you ask:

If the governor's original budget report fails to comply with K.S.A. 75-3721(f) is the governor required to submit a supplemental budget request to the legislature complying with K.S.A. 74-3721(f)?

Given our conclusion on your first question, we do not believe it is necessary to address your second question.

Sincerely,

Derek Schmidt
Kansas Attorney General

Athena E. Andaya
Deputy Attorney General