

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Representative Gerry Ray at 3:30 p.m. on March 14, 2002 in Room 519-S of the Capitol.

All members were present except: Rep. Hermes - excused

Committee staff present: Theresa Kiernan, Revisor
Mike Heim, Legislative Research Dept.
Kay Dick, Committee Secretary

Conferees appearing before the committee:

SB 446

Proponents

Louis Hentzen, Sedgewick County
Judge Paul Buchanan, Sedgewick County

SB 543

Proponents

Jim Clark, Assistant Attorney General

Others attending: See Attached List

Rep. Gilbert made a motion to approve the minutes for February 12th & 14th. Rep. Campbell seconded. The minutes were approved as written.

The chair opened the hearing on HB 446 - concerning district courts; relating to the purchase of supplies and equipment

Louis Hentzen, 18th Judicial District Court Administrator in Wichita, testified as a proponent on **SB 446**. He stated that the proposal to strike or remove the reference to "judge or judges of the district court" would clarify that the county department does not have authority over the expenditures of the District Court. (Attachment #1)

Paul Buchanan, Chief Judge of the 18th District Court, appeared before the committee as a proponent for **SB 446**. He stated "Actually **KSA 19-260a** and **19-260b** are inconsistent with the home rule power granted to counties by **KSA 19-101** and **19-101a**." He also reported that there is no additional cost to any county from the repeal of **KSA 12-269b**. (Attachment #2)

Following a brief question and answer period the hearing on SB 446 was closed

Hearing on SB 543 - concerning fire district; relating to compensation of volunteer members was open by the Chair.

Jim Clark Assistant Attorney General, provided testimony as proponent for the Kansas State Fire Marshal's office on behalf of the Attorney General. He explained that **SB 543** needed to be amended to specify that it authorizes the fire district to pay compensation to volunteer for fighting fires, responding to emergencies or attending meetings. (Attachment #3)

Following discussion and questions the **hearing was closed on SB 543.**

Action on SB 446:

Rep. Barnes made the motion to put SB 446 on the Consent Calendar. Rep. Gilbert seconded the motion. Motion carried with no opposition.

Meeting was adjourned. Next meeting is scheduled for Feb. 26th.

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ADMINISTRATIVE OFFICES OF THE DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT

ROOM 1110, 11TH FLOOR
525 N. MAIN
WICHITA, KANSAS 67203
EMAIL: lhentzen@distcrt18.state.ks.us

LOUIS J. HENTZEN
DISTRICT
ADMINISTRATOR



(316) 383-7302
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My name is Louie Hentzen; I am the District Court Administrator for the 18th Judicial District located in Wichita, Sedgwick County, Kansas. I am here today to testify on behalf of the proposal to strike any reference in KSA 19-260b pertaining to the "judge of the district court."

This statute was created in 1971, prior to court unification. It was created at a time in which Sedgwick and Johnson counties had "lower" courts that were funded totally by the county. In Sedgwick County this court was called the Court of Common Pleas.

The 1976 legislature created the Unified Court of Kansas and a one tier Court became reality in January 1977. Several statutes had to be changed to make unification happen. I believe this particular statute was overlooked.

Clearly, subsequent legislatures expanded on the unification of the Judicial system in Kansas. KSA 20-329 was amended to give the chief judge the responsibility for and supervisory authority over the clerical and administrative functions of the district court. KSA 20-349 provides that after the amount of the district court budget is established, the expenditures under such budget shall be under the control and supervision of the chief judge, subject to Supreme Court rules relating there to.

KSA 19-101a states that "counties may not affect the court therein." Several Attorney Generals' opinions have followed this intention by the legislature to ensure the independence of the Judicial Branch.

In Sedgwick County, the purchasing officers in the past have attempted to use KSA19-260b as a reason for denying expenditures that have been approved by the chief judge. This is clearly a violation of KSA 20-349. But this can easily be remedied by removing or striking the reference to the "judge or judges of the district court."

Clearly, the county has authority over the expenditures of county departments. The District Court, however, is not a county department.

Thank you for allowing me to appear in front of you today. If you have any questions, I will try to answer those for you.

Paul Buchanan
DISTRICT JUDGE
CHIEF JUDGE



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DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
525 N. MAIN - 11TH FLOOR
WICHITA, KANSAS
67203

House Local Government Committee

Testimony in Support of SB446

I appreciate the privilege the Committee has given me to furnish this testimony in support of SB446. K.S.A. 19-260b was passed in 1971. The reasons for its passage are lost from memory. It probably passed through the legislature as being a "local" bill.

Actually, K.S.A. 19-260a and 19-260b are inconsistent with the home rule power granted to counties by K.S.A. 19-101 and 19-101a. Sedgwick County has home ruled itself out from the provision of K.S.A. 19-260b.

This statute creates an anomaly in the State. In the two largest counties (and two largest judicial districts), the Chief Judge must go through the Board of County Commissioners to make purchases. In Wyandotte, Shawnee, Logan, Meade, Montgomery and ninety-eight (98) other counties the Chief Judge makes all the purchases for the court under the provisions of K.S.A. 20-349. There is no reason for the distinction applying to only two of the thirty-one Chief Judges in the state.

There is no additional cost to any county from the repeal of K.S.A. 12-260b. The county saves money because it no longer receives and processes the purchasing request from the Chief Judge.

K.S.A. 19-260b is obsolete because it refers to purchases by a judge or judges. K.S.A. 20-349 provides that all purchases are made by the Chief Judge.

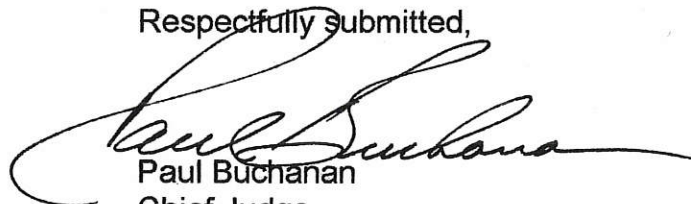
The Chief Judge of a district is a judge designated by the Supreme Court. It is not a position based on seniority.

The Chief Judge is either elected or retained in his district. Except in single district judge districts, (three districts) the Supreme Court has discretion in the appointment of Chief Judge.

There is no reason for special provisions for Sedgwick and Johnson counties.

Dated this 14th day of March, 2002

Respectfully submitted,



Paul Buchanan
Chief Judge

PB/rp



OFFICE OF THE
KANSAS STATE FIRE MARSHAL

700 SW JACKSON ST, SUITE 600, TOPEKA, KS 66603-3714
PHONE (785) 296-3401 / FAX (785) 296-0151

Gale Haag
Fire Marshal

Bill Graves
Governor

Testimony of the Kansas State Fire Marshal's Office
In Support of
SB 543
Presented March 14, 2002, House Local Government Committee

The Kansas State Fire Marshal's office requested this bill in response to Attorney General Opinion No. 2001-51 (attached), which concludes that since the statutes governing county fire districts (K.S.A. 19-3601 *et seq.*) are silent regarding compensation of volunteer firefighters, while statutes creating other kinds of fire districts specifically allow for such payments, the county fire district is not authorized to pay volunteers.

As there are 22 methods of forming fire districts in Kansas, the bill is aimed broadly to include chapter 12 (cities), chapter 19 (counties), chapter 31 (fire marshal), and chapter 80 (townships). This broad applications makes it clear that the legislative intent is to allow (not mandate) the payment of volunteer fire fighters.

The Fire Marshal's Office estimates no fiscal effect on this agency or the State of Kansas. Any fiscal effect on a local fire district would not be mandated, but would be within the governing body's discretion.

HOUSE LOCAL GOVERNMENT

03/14/02

Attachment 3

"Where fire safety is a way of life."



AGO 2001-07
& request for that
opinion!

State of Kansas
Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

December 18, 2001

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ATTORNEY GENERAL OPINION NO. 2001- 51

John E. Lang
Pottawatomie County Counselor
County Office Building, P.O. Box 187
Westmoreland, Kansas 66549

Re: Counties and County Officers--Fire Protection--Fire Districts; Governing Body; Powers; Tax Levies; Use of Proceeds, Limitations

Synopsis: A county fire district governing body organized pursuant to K.S.A. 19-3601 *et seq.* is not authorized to pay volunteers who respond to fire calls unless those volunteers are employees of the fire district. Portions of Attorney General Opinion No. 80-89 that discuss statutory authority for paying fire district employees are in conflict with subsequent amendments to K.S.A. 19-3601a and are therefore hereby withdrawn. Cited herein: K.S.A. 2000 Supp. 12-3915; K.S.A. 19-3601; 19-3601a; 19-3610; 19-3620; 80-1516; 80-1531; 80-1544; L. 1992, Ch. 132, § 1.

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*

Dear Mr. Lang:

You indicate that Pottawatomie County has a number of fire districts comprised of volunteer firefighters. You ask whether a fire district governing body appointed pursuant to K.S.A. 19-3601 *et seq.* has the authority to pay a per diem allowance to volunteer firefighters.

K.S.A. 19-3601a outlines the powers of a fire district governing body as follows:

"Upon the creation of a fire district under the provisions of K.S.A. 19-3601 *et seq.*, and amendments thereto, the governing body shall have the authority to:

- "(a) Enter contracts;
- "(b) acquire and dispose of real and personal property;
- "(c) acquire, construct, reconstruct, equip, operate, maintain and furnish buildings to house fire fighting equipment;
- "(d) acquire, operate and maintain fire fighting equipment;
- "(e) issue bonds as provided in this act;
- "(f) *pay compensation and salaries to fire district employees;*
- "(g) exercise eminent domain;
- "(h) pay the operation and maintenance expenses of the fire district and any other expenses legally incurred by the fire district; and
- "(i) do all other things necessary to effectuate the purposes of this act."¹

K.S.A. 19-3610 authorizes an ad valorem tax levy on property within the fire district and limits the use of levy proceeds "to carry out the powers, duties and functions of the governing body of the fire district as specified in K.S.A. 19-3601a. . . ." K.S.A. 19-3601a authorizes a fire district governing body to pay compensation to fire district employees; however, it does not provide for paying compensation to volunteer firefighters who are not employees of the fire district. The word "employee" is not defined in Article 36 of K.S.A. Chapter 19. Whether a person is an employee within the meaning of a particular statute depends upon the facts and circumstances.² We do not have adequate information to make a determination of whether the volunteer firefighters in Pottawatomie County are employees of the various fire districts.

You draw our attention to a conflict between Attorney General Opinion No. 80-89 and K.S.A. 19-3601a(f). Attorney General Opinion No. 80-89 concludes that:

"There is no specific statutory authority providing for the payment of salaries and salary-related expenses of fire district personnel in fire districts created pursuant to K.S.A. 1979 Supp. 19-3601, and the proceeds from the levy authorized by K.S.A. 19-3610 may not be used for the payment of salaries and salary-related expenses."

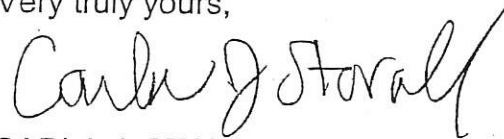
¹Emphasis added.

²Black's Law Dictionary 525 (6th Ed. 1990).

When Attorney General Opinion No. 80-89 was written in 1980, K.S.A. 19-3601a did not authorize the payment of compensation to fire district employees. Paragraph (f) of K.S.A. 19-3601a was added by the Legislature in 1992.³ Thus, the portion of Attorney General Opinion No. 80-89 that concludes that there is no statutory authority to use proceeds of the tax levied pursuant to K.S.A. 19-3610 to pay fire district employees is in conflict with the current provisions of K.S.A. 19-3601a and that portion of the Opinion is hereby withdrawn. The remaining portions of Attorney General Opinion No. 80-89 that discuss the home rule powers of a board of county commissioners to levy an additional tax on the property in a fire district remain viable.

A fire district is a creature of statute and has only such power and authority expressly granted by the Legislature.⁴ Any exercise of authority by a fire district must come from within the statutes. While there are other statutes that authorize the organization of fire districts, some of which contain specific authority for paying volunteer firefighters,⁵ K.S.A. 19-3601 *et seq.* does not include such authority. Because K.S.A. 19-3601 *et seq.* does not specifically authorize a fire district to pay volunteer firefighters, we opine that a county fire district governing body organized pursuant to K.S.A. 19-3601 *et seq.* may not pay a per diem allowance to volunteers responding to fire calls, unless those volunteers are employees of the fire district.

Very truly yours,



CARLA J. STOVALL
Attorney General of Kansas



Donna M. Voth
Assistant Attorney General

CJS:JLM:DMV:jm

³L. 1992, Ch. 132, § 1.

⁴*Petition of City of Shawnee*, 236 Kan. 1, 12 (1984).

⁵K.S.A. 2000 Supp. 12-3915(k); K.S.A. 19-3620; 80-1516; 80-1531; 80-1544(a).