

KANSAS CITY BOARD OF  
POLICE COMMISSIONERS:

The Kansas City Police Department is  
not authorized by law to pay to its  
civilian employees a mere gratuity.

October 13, 1960



Mr. Henry H. Fox, Jr.  
Secretary-Attorney  
Board of Police Commissioners  
Kansas City 6, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"Some time ago - I believe about 1953 - while I was Judge of the County Court of Jackson County, the question arose as to how long the County could retain an individual who was injured and/or hospitalized as a result of injuries received in 'line of duty' on an active pay status.

"My recollection is that there was an opinion rendered by your office indicating that the matter would be governed in part by the length of time that the employee was unable to perform official duties and, further, whether the individual injured was performing a so-called vital function and was a person not easily replaced.

"The Board of Police Commissioners in regular session on Thursday, the 21st of July, 1960, requested that I obtain an opinion in regard to a situation as follows:

"A female civilian employee, employed in the Youth Bureau of the Kansas City, Missouri, Police Department for a number of years, was stricken with an incurable disease. She had

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accumulated considerable sick leave at the rate of fifteen days per year. Her total accumulated sick time has now been used by her and the question is whether the Department would be legally justified in continuing to pay her regular salary or any portion thereof after she has exhausted her sick leave time.

"Our query is what legal rights does the Police Department have, due to the fact the Department is paid with funds appropriated by the City of Kansas City, to continue to pay the individual referred to either until death or her return to work."

It should first be pointed out that the monies which would be given to these two employees are public funds. 37 C.J.S., Fund or Funds, p. 1404 states:

"Public funds. The term 'public funds' means funds belonging to the state or to any county or political subdivision of the state; more specifically taxes, customs, moneys, etc., raised by the operation of some general law, and appropriated by the government to the discharge of its obligations, or for some public or governmental purpose; and in this sense it applies to the funds of every political division of the state wherein taxes are levied for public purposes. The term does not apply to special funds, which are collected or voluntarily contributed, for the sole benefit of the contributors, and of which the state is merely custodian."

In *State v. Igoe*, 107 S.W. 2d 929, 933, 340 Mo. 1166 (1937) the Supreme Court of Missouri adopted a similar definition:

"The term 'public funds' means funds belonging to the state or any county or political subdivision of the state; more especially taxes, customs, moneys,

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etc., raised by operation of some general law, and appropriated by the government to the discharge of its obligations, or for some public or governmental purpose \* \* \*."

The funds with which the salaries of policemen and civilian employees of the Kansas City Police Department are paid are derived from the revenue of the City of Kansas City. Section 84.730, Laws 1957, 2nd Ex. Sess. p. 152, infra. This would seem to clearly demonstrate that these funds are public funds.

Article III, Section 38(a) of the Missouri Constitution, 1945, states:

"Limitation on use of state funds and credit--exceptions--public calamity--blind pensions--old-age assistance--aid to children--direct relief--adjusted compensation for veterans--rehabilitation--participation in federal aid.--The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation, excepting aid in public calamity, and general laws providing for pensions for the blind, for old age assistance, for aid to dependent or crippled children or the blind, for direct relief, for adjusted compensation, bonus or rehabilitation for discharged members of the armed services of the United States who were bona fide residents of this state during this service, and for the rehabilitation of other persons. Money or property may also be received from the United States and be redistributed together with public money of this state for any public purpose designated by the United States." (Emphasis ours).

Article VI, Section 25 of the Missouri Constitution, 1945, states:

"Limitation on use of credit and grant of public funds by local governments--exceptions--pensions for policemen, firemen, and other employees of certain cities--benefit funds for educational employees.--

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No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, except that the general assembly may authorize any municipality to provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of the deceased members, and may authorize any city of more than 40,000 inhabitants to provide for the pensioning of other employees, and the widows and minor children of deceased employees, and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services, and to their beneficiaries or estates."

It will be noted that under the above constitutional provisions the legislature is empowered to establish pension plans for certain classes and prohibited from so doing for other classes. Such plans are established for firemen and policemen in Chapter 86, RSMo 1949. Provision is also made for the establishment of a Police Relief Association in Sec. 84.800-.810, RSMo 1949. However, no similar provision has been made for the civilian employees of the Kansas City Police Department.

The authorization for the employment and compensation of such civilian employees is contained in Section 84.520, Laws 1957, 2nd Ex. Sess. p. 158 which states:

"The chief of police, with the approval of the board, shall appoint such number of civilian employees as he deems necessary from time to time for the operation of the police departments, except the limitation on the total number of all police employees, including civilians, set forth in section 84.510 shall apply. Compensation for civilian employees of the police departments shall not exceed the compensation paid to police officers of the departments who perform like or similar work to that of such civilian employees, but the chief of police, with the approval of the board, may establish lower compensation for civilian employees than that received by police officers."

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There is no authorization for a gratuity to be paid to such civilian employees. The above constitutional provisions expressly prohibit the giving of public funds to an individual. The statute authorizing their employment expressly states that the compensation of such employees shall not exceed that of police officers doing similar work. Compensation here meaning payment for services rendered. This is evidenced by the wording of Section 84.730, Laws 1957, 2nd Ex. Sess. p. 159, which states:

"It shall be the duty of the board, on the fifteenth day of January of each year, to prepare, in writing, a budget estimating the sum of money which will be necessary for the next fiscal year, to enable the board to discharge the duties hereby imposed upon it, and to meet the expenses of the police department, which it shall forthwith certify to the governing body of such cities, and the budget shall itemize purposes of expenditure by organization units, activities, functions, and character classes in not less detail than 'personal services', 'contractual services', 'commodities', and 'capital outlays', and shall in any event, be prepared in form and detail similar to the form and detail in which budgets for the various departments of such city government are prepared. The governing body of the cities is hereby required to appropriate the total amount so certified, payable out of the revenue of the cities after first having deducted the amount necessary to pay the interest on the indebtedness of the cities, the amount necessary for lighting the city, and any sum required by law to be placed to the credit of the sinking fund of the cities, and if the board shall be required to call out extra police force and the expense thereof shall not have been contemplated in their estimate for the fiscal year during which the extra police force is called out, it shall immediately certify the expense of such additional force, and the additional amount so required shall be appropriated for that purpose, except that in no event

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shall the governing body of the cities be required to appropriate for the use of the police board in any fiscal year an amount in excess of one-fifth of the general revenue fund of such year." (Emphasis ours).

No payments could be made to either of these employees as "extra compensation" for past services due to the prohibition upon such payments contained in Article III, Section 39(3), Missouri Constitution, 1945, which states:

"The general assembly shall not have power:

"(3) Extra compensation to public employees or contractors.--To grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part;"

The Board is allowed under Section 84.520, supra, to set the compensation of such employees, and a short absence might be such that the Board would be justified in continuing the employee's salary. While the Board would not be authorized to pay these employees a mere gratuity, in some instances it might be advantageous to continue the salary of skilled employees while they are temporarily absent due to illness because of the expense to the state in properly training a new employee. If it were known that the employee could never return to work then there would be no justification to continue such payment, however, if the employee could be expected to return to work within a reasonable time it would be within the discretion of the Board to continue such payment as they may deem in the best interests of the state. However, the Board should be exceedingly cautious not to authorize a mere gratuity to such an employee under the guise of paying him a salary. Whether the money paid to the temporarily absent employee would be considered compensation or a gratuity would depend upon the specific facts of each case, taking into consideration the length of time during which the employee is unable to perform the services for which he was hired, whether such employment is a continuing one or is for only a special purpose, and the feasibility of hiring a new employee

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to perform the services which the disabled employee had previously performed. It should be pointed out that, as stated in your opinion request, these employees have already used up all of the sick leave which was allotted to them.

Enclosed you will find an opinion to Roderic R. Ashby, Prosecuting Attorney of Mississippi County, dated April 25, 1953, dealing with a similar situation. It may be of use to you in better understanding those elements that must be taken into consideration in determining whether an employee is being compensated for his services or is being given a mere gratuity.

#### CONCLUSION

It is, therefore, the opinion of this office that the Kansas City Police Department is not authorized by law to pay to its civilian employees a mere gratuity.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Riner.

Yours very truly,

John M. Dalton  
Attorney General

JWR:vlw

Enc. - Roderic R. Ashby  
4-25-53