

1992-1993 Ky. Op. Atty. Gen. 2-314 (Ky.A.G.), Ky. OAG 92-161, 1992 WL 541093

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG 92-161

December 28, 1992

Re: Whether Payments Made by Cabinet for Human Resources to County Attorneys for Child Support Enforcement Services, Pursuant to Contract with the Cabinet, are Considered as Compensation for Official Services for Purposes of the Constitutional Maximum as Provided by [Section 246 of the Constitution of Kentucky](#). AGO Corr. No. 92-(O)-1706.

Hon. A.B. Chandler, III
Auditor of Public Accounts
144 Capitol Annex
Frankfort, Kentucky 40601

Dear Mr. Chandler:

By letter of November 13, 1992, you ask whether payments made to county attorneys for child support enforcement services performed pursuant to contracts with the Cabinet for Human Resources are exempt from constitutional and statutory county attorney maximum salary provisions.

In our view, payments authorized under specific federal legislation, on a reimbursement basis, for salary costs of local officials associated with specific compliance with a contract with a state agency consistent with federal law, are payments for other than official services, and thus are not limited by [§ 246 of the Constitution of Kentucky](#).

The views expressed here are limited to reimbursements for contractual services specific to a contract provided for by federal law and regulations, paid from federally supplied funds, pursuant to the specific federal legislation, related federal regulations, associated state legislation, and the factual circumstances here involved. Further, the views expressed here should not be construed as finding that payments from federal funds in general, to public officials in Kentucky, may be made in excess of limitations expressed in Kentucky's Constitution. Discussion follows.

Background

The payments involved here, and the services for which they are received, are for specific services related to enforcement of child support provisions through a county attorney's office, as called for by a contract with Kentucky's Cabinet for Human Resources, as provided for by Title IV–D of the U.S. Social Security Act, [42 U.S.C. 651](#) et seq. Such a contract (cooperative agreement) is expressly authorized, under state law, by Kentucky Revised Statutes (KRS) 205.712(4).

“Payments to county attorneys,” as used in your letter, presumably refers to payments made by the Cabinet for Human Resources, under a contract alluded to above, either to the office of a county attorney, or to a fiscal court (it appears from the research incident to preparing this opinion that payments from the Cabinet under the contracts you have asked about are not made directly to an individual county attorney). Such payments are made on a reimbursement basis, consistent with requirements specified by federal law (see above), and federal regulations and guidelines in such regard. See for example, 45 CFR 301, et seq. The payments may include reimbursement for costs for that portion of a county attorney, assistant county attorney, or county attorney staff person's salary attributable to work consistent with the agreement with the Cabinet, reimbursement of operational expenses, and incentive payments consistent with federal law, or a combination of such items. All of such payments are specifically provided for by applicable federal law and regulations for such specific purposes. The payments are not made

from a general allocation of federal funds to the state for disbursement at its discretion for a generally provided for program. As previously noted, the contract or agreements under which such payments are made from federal funds pursuant to federal law are expressly provided for by [KRS 205.712\(4\)](#).

***2** [§ 246 of the Constitution of Kentucky](#) provides, in part, that:

No public officer or employee except the Governor, shall receive as compensation per annum for official services, exclusive of the compensation of legally authorized deputies and assistants ... any amount in excess of the following sums: Officers whose jurisdiction or duties are coextensive with the Commonwealth ... Twelve Thousand Dollars (\$12,000) [.]

(Emphasis added.)

County attorneys are included among the officers or employees having jurisdiction or duties “coextensive with the Commonwealth” by virtue of being subject to assignment anywhere in the state pursuant to [KRS 15.730](#), and pursuant to [KRS 15.765\(3\)](#). Their salary for “official services” may not exceed \$12,000 as provided by [§ 246 of the Constitution of Kentucky](#), subject of course, to the “rubber dollar” valuation of that sum. See, for example, OAG 92–27.

From a plain reading of [§ 246](#), obviously only that portion of payments to a county attorney's office that would be paid as salary are of concern here. Operational expense costs clearly are not constrained by [§ 246](#) of Kentucky's Constitution.

This leaves the question of whether payments to county attorneys, or their assistants or staff, as salary, are subject to the limitation imposed by [§ 246](#).

Payments In Question Are Not For Official Services

We believe the services performed by county attorneys (and other designated recipients of IV–D funds), pursuant to the specific requirements of a contract provided for by federal law, are beyond the scope of their “official services” within the meaning of that phrase in [§ 246](#).

We are well aware that county attorneys, and thus those in their employ, have general statutorily-provided duties in connection with enforcement of child support. See for example, [KRS 406.021](#) and [407.190](#). They have yet other duties set forth in [KRS 15.725](#), [KRS 69.210](#), and a number of other provisions. Still, in our view, the breadth and depth of specific services demanded under the contract with the Cabinet for Human Resources, as the designated agency for purposes of administration of the requirements of IV–D of the U.S. Social Security Act in Kentucky (see “Second Party” services, Cabinet for Human Resources Program Administration Contract, form CHR 811, Rev. 3/92), are beyond the “official services” required of a county attorney as provided by those provisions, and within the meaning of [§ 246 of the Constitution of Kentucky](#). IV–D compliance is the required official duty or service of the Cabinet for Human Resources, Division of Child Support—not the county attorney, or office thereof. [KRS 205.712\(2\)](#). Indeed, the county attorney is specifically empowered to decline to be the designee of the Cabinet in administering the program of child support within a county. [KRS 205.712\(4\)](#).

As pointed out in *Buchignani*, *infra*, at page 468, citing 67 C.J.S., *Officers*, § 227, pp. 727–728:

... [A]n officer is not obliged, because his office is salaried, to perform all manner of public service without additional compensation. So, for services performed by request, not part of the duties of his office, and which could have been appropriately performed by any other person, he may recover a proper remuneration.

***3** Payment of an officer for services outside the scope of the official services required of him is not subject to [§ 246 of the Constitution of Kentucky](#). *Slayton v. Rogers*, 128 Ky. 106, 107 S.W. 696 (1908); *Land v. Lewis*, Ky., 186 S.W.2d 803 (1945); *Buchignani v. Lexington–Fayette, Etc.*, Ky.App., 632 S.W.2d 465 (1982).

Because they are for services beyond the official services required of a county attorney as indicated, payments to county attorneys or their employees, from funds of Title IV–D of the U.S. Social Security Act, as reimbursement for salary costs pursuant to federal law, are not subject to [§ 246 of the Constitution of Kentucky](#).

Sincerely,

Chris Gorman
Attorney General
Gerard R. Gerhard
Assistant Attorney General

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