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**Appendix N: OAG Opinion 05-002**

**OAG 05-002**

January 7, 2005

*Subject:* County Attorney Office Operating Expenses

*Requested by:* Hon. Harold "Mac" Johns, Todd County Attorney and President, Kentucky County Attorneys' Association

*Written by:* Janet M. Graham, Assistant Deputy Attorney General

*Syllabus:* A county attorney may use proceeds from the county attorney's delinquent real estate tax collection account to pay for travel to board meetings and other events sponsored by the Kentucky County Attorneys' Association because these constitute county attorney office operating expenses pursuant to KRS 134.545.

*Statutes construed:* KRS 134.545.

***Opinion of the Attorney General***

On October 18, 2004, Hon. Harold "Mac" Johns, President of the Kentucky County Attorneys' Association ("KCAA"), submitted an opinion request to the Attorney General as to whether he could be reimbursed for "travel to board meetings and other events on behalf of the KCAA." The answer to this question is "yes" as further outlined below.

County attorneys receive compensation for various duties that are delineated in Kentucky statutes. One of these duties is assisting the Revenue Cabinet in collecting delinquent property taxes. When the county attorney renders this assistance, he or she is entitled to compensation based upon the specific service performed. See KRS 132.250, 134.340, 134.400, 134.540 and 135.040.

KRS 134.545, enacted in 1978, provides that "Moneys paid to the county attorney under KRS 132.350, 134.340, 134.400, 134.500, 134.540 and 135.040 shall be used only for payment of county attorney office operating expenses." However, the phrase "county attorney office operating expenses" is not defined in the statute. Additionally, no cases appear to directly interpret this particular statute.

However, prior to the enactment of this statute, cases did examine similar issues with respect to the prior statutory framework. In *Funk v. Milliken*, 317 S.W.2d 499 (Ky. 1958), an appeal of a declaratory judgment action, Kentucky's highest court examined the issue of what constitutes a county attorney "personal expense" versus what constitutes a "necessary office expense." In this case, the Court adopted the view that a county attorney could be reimbursed for expenses of his office that are "reasonable in amount, beneficial to the public, and not predominantly personal to the officer in the sense that by common understanding and practice they are considered to be personal expenses." *Id.* at 506.

The Court in *Funk* specifically examined expenses related to attending a state school for county attorneys, attending the annual convention of county attorneys and dues paid to a national association of county attorneys. The Court held that the expenses were "official" and not "personal" and that the county attorney was entitled to credit for these expenses. *Id.* at 508. See also *Reeves v. Talbott*, 289 Ky. 581, 159 S.W.2d 51 (holding that Commissioner of Revenue's attendance at a national tax conference was a proper office expense); *Louisville and Jefferson County Bd. of Health v. Steinfeld*, 308 Ky. 824, 215 S.W.2d 1011 (holding that executive of municipal health board could properly be reimbursed for attendance at medical meeting).

Because of the lack of a definition of "county attorney office operating expenses," the Kentucky County Attorneys Association in conjunction with the Attorney General's Office and the Auditor of Public Accounts has promulgated a set of guidelines for county attorneys with respect to the proper use of the moneys collected pursuant to the above-referenced statutes and pursuant to KRS 514.040(5). A copy of these guidelines is attached. Based upon these guidelines, the Attorney General's Office is currently promulgating regulations which should further delineate the appropriate parameters for the use of this money. Until these regulations are finalized, we believe that county attorneys may rely upon the attached guidelines as generally accepted standards of use for moneys collected in their fee accounts.

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