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May 15, 2012

ATTORNEY GENERAL OPINION NO. 2012- 13

Mr. Larry Markle  
Chautauqua County Attorney  
215 N. Chautauqua  
Sedan, Kansas 67361

Re: Procedure, Civil—Costs—Docket Fees; Authorized Only By Legislative Enactment; Additional Costs; Taxation of Costs; Items Allowable as Costs; Municipalities Exempt from Depositing Court Costs; Exceptions

Procedure, Civil—Asset Seizure and Forfeiture—Seizure of Property; Commencement of Forfeiture Proceedings

Synopsis: The court may not require payment of a docket fee by law enforcement agencies to file an asset forfeiture case pursuant to the Kansas Standard Asset Seizure and Forfeiture Act. However, once the case has been filed, the court has statutory authority to exercise its discretion in taxing costs against the parties for maintaining an action. The docket fee is allowable as court costs. Once the court determines to award court costs, the amount of the docket fee shall be assessed as costs. We conclude the 2011 legislative amendments to K.S.A. 60-4107(b)(3) and 60-4109(b) do not change this conclusion. Cited herein: K.S.A. 2011 Supp. 60-2001; 60-2003; 60-2005; K.S.A. 60-4101; K.S.A. 2011 Supp. 60-4104; 60-4107; 60-4109; 60-4112; 60-4113; K.S.A. 60-4114; and 60-4115.

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Dear Mr. Markle:

As County Attorney for Chautauqua County, you ask for our opinion on whether a court may tax court costs in asset forfeiture cases filed by law enforcement agencies pursuant

to the Kansas Standard Asset Seizure and Forfeiture Act (“the Act”)<sup>1</sup>. At issue, in essence, is whether a docket fee may be assessed as court costs at the conclusion of an asset forfeiture case when K.S.A. 60-2005 exempts municipalities, defined to include law enforcement agencies, from depositing court costs or paying docket fees prescribed by any other of law of this state.<sup>2</sup> We would note at the outset that this same statute provides that if costs are assessed against the municipality, then such costs shall include the docket fee.

You also ask what effect the 2011 legislative changes to K.S.A. 60-4107(b)(3) and 60-4109(b) have on whether a court may tax court costs in asset forfeiture cases filed by law enforcement agencies pursuant to the Act. We will answer each of your questions in turn.

### **Municipality Exemption Pursuant to K.S.A. 2011 Supp. 60-2005**

Our analysis follows the rules of statutory interpretation employed by the courts. The fundamental rule of statutory interpretation is that the intent of the legislature governs if that intent can be ascertained.<sup>3</sup> The first step to ascertain legislative intent is through the language of the statutory scheme enacted.<sup>4</sup> When a statute is plain and unambiguous, we neither speculate as to the legislative intent behind it nor read into the statute something not readily found in it.<sup>5</sup> The provisions of an act should be considered *in pari materia*, with a view of reconciling and bringing the provisions into a workable harmony if possible.<sup>6</sup>

Because your question involves both docket fees and court costs, we review relevant statutes concerning docket fees and court costs individually and also in relation to asset forfeiture cases.

Black's Law Dictionary defines “docket fees” to mean “[a] fee charged by a court for filing a claim.”<sup>7</sup> K.S.A. 2011 Supp. 60-2001(a) provides that “[e]xcept as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee. . . .”<sup>8</sup> A docket fee “shall only be established by an act of the legislature. . . .”<sup>9</sup> “The docket fees and the fees for service

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<sup>1</sup> K.S.A. 60-4101 *et seq.*

<sup>2</sup> K.S.A. 60-2005 states, The state of Kansas and all municipalities in this state, as defined in K.S.A. 12-105a, and amendments thereto, are hereby exempt, in any civil action in which such state or municipality is involved, from depositing court costs or paying docket fees prescribed by any other law of this state, *except that if the costs are assessed against the state of Kansas or any municipality in this state in any such action, such costs shall include the amount of the docket fee prescribed by K.S.A. 60-2001, and amendments thereto, together with any additional courts costs accrued in the action.* (Emphasis added).

<sup>3</sup> *State v. Comprehensive Health of Planned Parenthood*, 291 Kan. 322, 357 (2010).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Southwestern Bell Tel. Co. v. Beachner Constr. Co.*, 289 Kan. 1262, 1270 (2009).

<sup>7</sup> Black's Law Dictionary (9th ed. 2009).

<sup>8</sup> K.S.A 2011 Supp. 60-2001(a).

<sup>9</sup> *Id.*

of process shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff.”<sup>10</sup>

While a docket fee is one that is charged for filing a lawsuit, court costs are designed to address expenses incurred in the maintenance of a lawsuit.<sup>11</sup> The taxation of costs is a matter controlled by statute, and a court has no inherent power to award costs beyond statutory authorization.<sup>12</sup> K.S.A. 2011 Supp. 60-2003 lists items that may be included as court costs.<sup>13</sup> These include “the docket fee as provided for by K.S.A. 60-2001, and amendments thereto. . .”<sup>14</sup> and “[s]uch other charges as are by statute authorized to be taxed as costs.”<sup>15</sup>

Turning to your question, and applying the rules of statutory construction, we need not speculate about the legislative intent. K.S.A 2011 Supp. 60-2001 requires a docket fee to be paid in Chapter 60 proceedings unless a statute specifically exempts such payment. K.S.A 2011 Supp. 60-2005 is such a statute. It exempts municipalities<sup>16</sup>, which you stated in your letter has been interpreted to include law enforcement agencies, from paying docket fees and court costs; however, it also provides the court statutory authority to use its discretion to assess court costs against the municipality. Courts are authorized to assess court costs for items listed in K.S.A. 2011 Supp. 60-2003. Docket fees are an item authorized by K.S.A. 2011 Supp. 60-2003.

We conclude, therefore, that the court may not require payment of a docket fee by law enforcement agencies to file an asset forfeiture case pursuant to the Act. However, once the case has been filed, the court has statutory authority to exercise its discretion in taxing costs against the parties for maintaining an action. The docket fee is allowable as court costs.

### **2011 Legislative Changes to the Kansas Standard Asset Seizure and Forfeiture Act**

The Act contains specific provisions concerning both docket fees and court costs. For example, a law enforcement officer may constructively seize property by filing or recording in the public records relating to the type of property notice of seizure for forfeiture,<sup>17</sup> notice of pending forfeiture,<sup>18</sup> a forfeiture lien or a *lis pendens*. These filings

<sup>10</sup> K.S.A. 2011 Supp. 60-2001(c).

<sup>11</sup> *Barnes v. Employment Security Board of Review*, 210 Kan. 664, 681 (1972).

<sup>12</sup> *Hodges v. Lister*, 207 Kan. 260, 266 (1971); *Brown v. Zackert*, 10 Kan.App.2d 466, 468 (1985).

<sup>13</sup> K.S.A. 2011 Supp. 60-2003(1) through (8).

<sup>14</sup> K.S.A. 2011 Supp. 60-2003(1).

<sup>15</sup> K.S.A. 2011 Supp. 60-2003(8).

<sup>16</sup> See K.S.A. 12-105a (“ . . . (a) ‘Municipality’ means and includes county, township, city, school district of whatever name or nature, community junior college, municipal university, city, county or district hospital, drainage district, cemetery district, fire district, and other political subdivision or taxing units, and including their boards, bureaus, commissions, committees and other agencies, such as but not limited to, library board, park board, recreation commission, hospital board of trustees having power to create indebtedness and make payment of the same independently of the parent unit. . . .”).

<sup>17</sup> See K.S.A. 60-4102(h) (“Notice of seizure for forfeiture” means a written statement by a law enforcement agency that property has been seized and may be proceeded against pursuant to this act, and providing information concerning the property, the seizure, and the law enforcement agency”).

or recordings “are not subject to a filing fee or other charge, except that court costs may be assessed and, if assessed, shall include the amount of the docket fee prescribed by K.S.A. 60-2001, and amendments thereto, and any additional court costs accrued in the action.”<sup>19</sup>

Likewise, “[t]he plaintiff’s attorney,<sup>20</sup> without a filing fee, may file a lien for the forfeiture of property upon the initiation of any civil or criminal proceeding relating to conduct giving rise to forfeiture under this act or upon seizure for forfeiture.<sup>21</sup> Court costs may be assessed and, if assessed, shall include the amount of the docket fee prescribed by K.S.A. 60-2001, and amendments thereto, and any additional court costs accrued in the action. . . .”<sup>22</sup>

We need not speculate about the legislative intent in amending either K.S.A. 60-4107(c)(3) or 60-4109(b). The language in each of these sections is plain and unambiguous and unequivocally provides that no docket fee can be required in any of the circumstances described in these two sections to file or record the certain identified actions or to commence a forfeiture proceeding. Once a filing or recording as described in K.S.A. 2011 Supp. 60-4107(c) is made, or a forfeiture proceeding is commenced under K.S.A. 2011 Supp. 60-4109(b), the court may, in its discretion, assess court costs in the matter. Because the statutory language used in both sections provides that “court costs may be assessed,” the court clearly has the discretion in each case to determine whether court costs should be assessed. However, once a court determines to impose court costs, the plain language of the statute makes clear that the court has no discretion and must impose the amount of the docket fee prescribed by K.S.A. 2011 Supp. 60-2001 as court costs in the particular case.

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<sup>18</sup> See K.S.A. 60-4102(g) (“Notice of pending forfeiture” means a written statement by the plaintiff’s attorney following a seizure of property but prior to the filing of a judicial complaint against such property allowing for an administrative resolution to claims or recognition of exemptions”).

<sup>19</sup> See K.S.A. 2011 Supp. 60-4107(c)(3). This statute was amended with the passage of 2011 Senate Bill No. 63 to grant the court discretion to assess court costs.

<sup>20</sup> See K.S.A. 60-4102(m) (“Plaintiff’s attorney” means a county or district attorney, or the attorney general, such attorney’s assistant, or another attorney approved, pursuant to subsections (h) and (i) of K.S.A. 60-4107, employed by a law enforcement agency to litigate a forfeiture on behalf of the agency”).

<sup>21</sup> See K.S.A. 60-4102(s) (“Seizure for forfeiture” means seizure of property by a law enforcement officer including a constructive seizure coupled with an assertion by the seizing agency or a plaintiff’s attorney that the property is subject to forfeiture).

<sup>22</sup> K.S.A. 2011 Supp. 60-4109(b). This statute also was amended with the passage of 2011 Senate Bill No. 63 to grant the court discretion to assess court costs.

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In conclusion, the 2011 legislative changes to K.S.A. 60-4107(c)(3) and 60-4109(b) make it abundantly clear that the court may not require payment of a docket fee by law enforcement agencies to file an asset forfeiture case. However, once the case has been filed, the court has statutory authority to exercise its discretion in taxing court costs against the parties for maintaining an action. If costs are assessed, then the amount of the docket fee shall be assessed as costs.

Sincerely,

Derek Schmidt  
Attorney General

Athena Andaya  
Deputy Attorney General

Lisa Mendoza  
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