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The Influence of the Kansas Supreme Court on the Powers and Duties of the County Commissioners, 1861 to 01/01/1958

Fred Keyworth
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THE INFLUENCE OF THE KANSAS SUPREME COURT
ON THE POWERS AND DUTIES
OF THE COUNTY COMMISSIONERS, 1861 to 1958
being
A Master's Report presented to the Graduate Faculty of
Fort Hays Kansas State College
in partial fulfillment of the
requirements for the
Degree of Master
of Science

by

Fred J. Keyworth, A.B.
Fort Hays Kansas State College
Approved [Signature]
Major Professor

Date July 21, 1959

[Signature]
Chr. Graduate Council
ACKNOWLEDGMENT

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CHAPTER I

INTRODUCTION

The county commissioners are the elected quasi-legislative, quasi-judicial, administrative officers of the county, and as such have the duty to conduct most of the affairs of the county. This topic was chosen because the office of county commissioner is the most interesting to this student in that as the administrative and supervisory agents of the county they have more liberty of choice and discretion than the other officers; also, because the commissioners are the legal litigants in all suits against the county. The Supreme Court of Kansas has had a great opportunity to review and influence the powers and duties of the office. The Kansas Constitution and the General Statutes of Kansas provide for the office and set out the various duties, powers, and limitations of the office. The Supreme Court of Kansas, however, is the final word on the interpretation of these constitutional and statutory powers and duties of the board. This paper will show the various interpretations and influences on the office as provided by the Supreme Court decisions. The term board of county commissioners will hereinafter be referred to as the board.
The author first reviewed the Constitution and General Statutes pertaining to the county commissioners; then by examination of the various cases cited as pertaining to these statutes, he has attempted to show the court's interpretation of the statute as applied to specific cases.

The second chapter concerns itself with the board; their election, term, organization as a board, vacancies in office, eligibility to the office, and their authority to act as a board. The commissioner district and redistricting was also included in this chapter.

The third chapter pertains to the statutes which provide the duties and powers for the board and the cases which interpret these duties and powers. In dealing with the board as a body, the author subdivided further; first, showing their duties such as meetings and proceedings, keeping of records, appeals from their decisions or actions, their liabilities for their acts, and county administration; secondly, their powers, which are subdivided into statutory powers and implied powers as well as the limitations to their powers.

The limitations of this report are: the author selected one area in the total picture of the county organization, that of the county commissioners, their powers and duties. In so doing, he has used only those cases pertai-
ing to the office of county commissioners which interpret the powers and duties of the board.

**CHAPTER II**

**COUNTY COMMISSIONERS IN COUNCIL DISTRICTS.**

This chapter pertains to the office of county commissioners, its conception, organization and administration. It will cite names dealing with the election and term of office of county commissioners, the organization of the board, vacancies and invalidity of the board members and their authority to act as a board.

**Elections.**

The Kansas Constitution provides that:

All county and township officers shall be elected on the Tuesday next preceding the first Monday in November in even numbered years and shall hold office for a term of two years and until their successors are qualified; provided, one county commissioner shall be elected from each of three districts, numbered one, two, and three, by the voters of the district, and the legislature shall fix the time of election and the term of office, or such proportionate term of office to be at a general election, and no term of office to exceed six years.

As in the case of *Patterson v. Noble*, 235 U.S. 1 (1914), the question is, are the county officers appointed by the governor to enter upon all of the statutory duties of their office, and are the commissioners next elected

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1 *Kansas, Constitution* (Amendment A, 1875), Art. 8, Sect. 1.
CHAPTER II

CONSTITUTIONAL PROVISIONS FOR ELECTION OF COUNTY
COMMISSIONERS IN COMMISSIONER DISTRICTS

This chapter pertains to the office of county commissioner, its conception, organization and authori-
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voters of the district, and the legislature shall
fix the time of election and the term of office
of such commissioners; such election to be at a
genral election, and no term of office to exceed
six years.\(^1\)

As in the case of _Keating v. Marble_, 39 K. 370,
(1888), the question is; are the county officers appointed
by the governor to enter upon all of the statutory duties
of their office, and are the commissioners next elected

\(^1\)Kansas, _Constitution_ (Amendment, 1902), Art. 4,
Sec. 2.
to be elected from districts or from the county at large? The court decided that the temporary or special commissioners appointed by the governor have power to divide the county into commissioner districts; and the commissioners elected to succeed the special or temporary commissioners after such division, are to be elected by the districts, and not by the voters of the entire county.

There is no dispute of fact involved in the case of In re. Naff, 144 K. 424, (1936). At the general election in 1932, W.P. Johnson was elected commissioner for District Number 1, Crawford County. At an appropriate time prior to June 20, 1936, Naff attempted to file his declaration of intention to become a candidate for the above office. The county clerk refused to accept the declaration on the ground that under the provisions of Laws 1903, the term of such office is six years and that there was no expiring term to be filled at the general election in 1936. The Supreme Court ruled that, under the provisions of Article 4, Sec. 2, the legislature is without power to fix terms of different lengths for the county commissioners of the various counties of the state.

Term

The Kansas Constitution provides that:

The legislature shall provide for such county
and township officers as may be necessary.\textsuperscript{2}

For example, the case of \textit{Leavenworth County v. The State}, 5 K. 688, (1869), included the following points of law: commissioners are county officers, acting solely as agents of the county in performing the duties prescribed by law, and consequently hold their office for two years.

\textbf{Organization}

The Kansas Statutes provide that:

The board of county commissioners shall meet on the second Monday in January succeeding their election or within thirty days, and organize by electing one of their number chairman, who shall preside at all meetings; if absent, a temporary chairman may be elected by the remaining members. On the death or resignation of the chairman, the board may at any regular or special meeting, elect one of their number to fill the vacancy.\textsuperscript{3}

In the case of \textit{Shelden v. Butler County Commissioners}, 48 K. 356, (1892), the court stated that on the second Monday of January after each general election at which a commissioner has been elected, the board as an organized body is dissolved, and the office of chairman is vacant, and before the commissioners may transact any county business other than to elect a chairman or fill a vacancy in

\textsuperscript{2}\textit{Kansas, Constitution, (Amendment, 1902), Art. 9, Sec. 2.}

\textsuperscript{3}\textit{Franklin Corrick, Reviser of Statutes, (ed.), General Statutes of the State of Kansas, 1949 (Topeka, State Printer Ferd Voiland, Jr., 1956), Sec. 19-219.
the office of commissioner, the board must be again organized.

In Fuller v. Miller, 32 K. 130, (1884), action was brought to determine which of the parties legally holds the office of chairman of the board of Ellis County. The court stated that the chairman holds his office from the day of his election until the second Monday of January next after his election to that office.

In the case R.N. Molyneau v. Grimes, 78 K. 830, (1908), the plaintiff contended that a meeting in which a chairman is elected can transact no other business; however, the court decided that the meeting of the board at which they are required to elect a chairman is a "regular meeting" within the meaning of that phrase as used in the provision that road petitions shall be presented at regular meetings. This statement is from the context of the case--"Obviously the law does not contemplate that the board at its 'organization' meeting shall elect a chairman and at once adjourn. The provision that he shall preside at the meeting implies that business is expected to be transacted after his election."

Vacancy

The Kansas Statutes provide that:

When a vacancy occurs in the office of a commissioner, the remaining commissioner or
commissioners and the county clerk shall appoint some one resident in the district to fill the office until the next general election when a commissioner shall be elected to fill the unexpired term.\(^4\)

In the case Rogers v. Slonaker, 32 K. 191, (1884), the county commissioner for the second district at a regular meeting resigned and shortly thereafter left the county. The next day after the resignation, the county clerk and the commissioner from the third district met without notice to the first district commissioner and appointed the realtor who was at the time the county coroner as the commissioner from the second district. The realtor then qualified and shortly thereafter mailed his resignation as coroner to the governor. When the newly elected board met they appointed the defendant to the position of commissioner of the second district. The court stated that in this state, the coroner is a county officer, and the resignation of a person holding the office of coroner takes effect on its acceptance by the governor of the state, and until so accepted by him it is simply an offer to resign. Further, where a vacancy occurs in the office of county commissioner, such vacancy must be filled by the remaining commissioners and county clerk. Where there were two

\(^4\) Ibid., Sec. 19-203.
commissioners remaining, and one of them and the county clerk, in the absence of the other, and without notice to him, met, and in form appointed a person to fill the vacancy, such appointment is void.

In the case Hamilton v. Raub, 131 K. 392, (1930), the questions were: one, when shall an election be held to fill the unexpired official term of office of a deceased commissioner whose term runs for four years—at the next general election or at the general election at the end of his term, and if such election is held at the next general election, may the party central committee select a candidate or nominee whose name should be placed on the ballot. At the general election in November, 1928, a commissioner was elected for a term of four years. He duly qualified and discharged his duties until his death on August 14, 1930. Thereafter, the other commissioners and county clerk appointed a person to fill the vacancy on the board. The court held that such appointee holds office only until the next general election; further, that the next general election is the one to be held on November next, (1930). Second, in the case stated, no one was nominated at the primary election held before the commissioners death in 1930. As to whose name should appear on the ballot, the court held that the county central committee has no power
or authority to nominate a candidate for that position and have his name appear on the ballot.

Eligibility

The Kansas Statutes provide that:

To be eligible to hold the office of county commissioner, no person holding any state, county, township or city office or any employee, officer or stockholder in any railway or railroad company, in which the county owns stock shall be eligible to the office of county commissioner in any county in this state.\(^5\)

This point has been previously shown in Rogers v. Slonaker, 32 K. 191, (1884). Also in the case State ex rel. v. Plywell, 46 K. 294, (1891), the defendant was a candidate for the office of commissioner for the third district, and received a majority of the votes and was declared elected, and in January entered upon the discharge of the duties of said office. At that time the defendant was employed as the city clerk of a third class city within the county. He maintains that he resigned; however, the city officials maintain that he did not resign and continued in the performance of his duties as city clerk. Action was brought to oust Plywell from his office as commissioner. The court stated that in this state a person holding a city office cannot hold, at the same time, the office of county commission

\(^5\) Ibid., Sec 19-205.
commissioner. The case of Demaree v. Scates, 50 K. 275, (1893), was one in which the plaintiff brought action to obtain from the defendant the seat of commissioner which the defendant held. The plaintiff was, at the time of the election, a township officer. The defendant maintained that he held the office because the plaintiff was not eligible before the term of office to which he was elected began. The court held that the word "eligible" as used in the statute means "legally qualified", that is, capable of holding office. The term "eligible", as used, does not mean "eligible to be elected" to the office of commissioner at the date of the election, but "eligible or legally qualified" to hold the office after the election; that is, at the commencement of the term of office.

In the case of Abry v. Gray, 58 K. 149, (1897), the court stated that where neither constitutional nor statutory law prohibits one person holding two offices, the case must be determined under the general rules of the Common Law; as stated in Nineteenth American and English Encyclopedia of Law, 562 W. "The incompatibility which will operate to vacate the first office must be something more than the mere physical impossibility of the performance of the duties of the two offices by one person, and may be said to arise where the nature and duties of the
two offices are such as to render it improper, from considerations of public policy for one person to retain both. Authority to act as a board

These cases show the authority to act as a board of county commissioners. Numerous references are made in the statutes to the meetings and the official action of the board, thus raising the implied official authority to act as a board.

In Paola and Fall River Railway Company v. Anderson County Commissioners, 16 K. 302, (1876), three of the points of law were: one, the powers of a county are vested in the board as a corporate entity, and not in the commissioners separately and as individual officers. Second, the board, before it can act, must be convened in legal session either regular, adjourned, or special; and a casual meeting of a majority of the commissioners does not create a legal session, and third, a special session may be convened upon the call of the chairman at the request of two members; but personal notice of such call must be served, if practicable, upon every member of the board.

In Railway Company v. Commissioners of Anderson County, 16 K. 302, (1876), the ruling was handed down that "the powers of a county are vested in a board of commissioners as a corporate entity, and not in the commissioners
separately and as individual officers. In the case of *Patrick v. Haskell County Commissioners*, 108 K. 141, (1920), the court stated that the acts of one who is county commissioner *de jure* or *de facto* are binding on all the people of the county, and his authority to act as a *de facto* officer cannot be questioned by anyone except the state.

In the case *In re. Tory*, 67 K. 186, (1903), the court pointed out the following: a prisoner lawfully confined in the county jail for the non-payment of a fine who is released by the sheriff without an order of the board, but upon the direction of two of the individual members thereof, may be retaken and reincarcerated without new or additional process or proceedings. The sheriff had no authority to release the prisoner except upon an order of the board lawfully made. The board could not act except at a meeting regularly held. The conduct of two members as individuals was wholly nugatory. Powers of the board and the sheriff are strictly defined by the law. Anything done by them in excess of authority is void.

In the case of *Motin v. Leavenworth County Commissioners*, 89 K. 742, (1913), and also in *Roberts v. St. Marys*, 78 K. 707, (1908), the court stated that it is a general rule that persons dealing with the officers of a municipal corporation must ascertain the nature and extent of their
authority, but in matters which are the proper subjects of municipal action, where there is no provision of law requiring that such authority shall be given by formal action of the governing body, it may be shown by a course of conduct which induces others honestly to assume and rely upon its existence.

**Districts and Redistricting**

The remaining portion of this chapter pertains to the cases involved in the creation of commissioner districts and the cases involved in the statutory provisions for the periodic redistricting of commissioner districts.

The Kansas Statutes provide:

The board of county commissioners shall, on the day of the organization of the board or as soon thereafter as may be possible, meet and divide the county into three commissioner districts, as compact and equal in population as possible, and number them respectively one, two, and three, and subject to alteration at least once every three years; but if they fail to make such division before the election of the county officers, it shall not prevent the election of the commissioners.\(^6\)

In the case of **Brungardt v. Leiker**, 42 K. 206, (1889), the question is whether or not the office of commissioner from the third commissioner district held by the defendant was vacated by a change of the districts that

\(^6\)Ibid., Sec. 19-204.
placed the township wherein the defendant resides, in the second district. The defendant has not moved his residence; he still lives in the identical place as when elected. The board changed the boundaries of the districts, and by the change he is placed in the second district. Under the law, the defendant's term was for three years in the original district three. It was stated by the court that the office of a member of the board elected for three years is not vacated by a change in the boundaries of the commissioner districts, when the member continues to reside in the district for which he was elected, although by the change he was placed in another district.

In State ex rel. v. Osage County Commissioner, 112 K. 256, (1922), the points of law as stated by the court were: one, under the provisions of the General Statutes 1915, which requires the county board to "meet and divide the county into three commissioner districts, as compact and equal in population as possible" and held the duty of determining how nearly the districts shall approximate equality in population and compactness of territory is vested solely in the board, and the courts will not issue the writ of mandamus to control that discretion, except upon a clear showing that it has been abused, and upon that issue the burden rests upon the plaintiff. Two, not every
departure from equality and the number of inhabitants ought to be the subject of review by the courts. It must be a grave, palpable and unreasonable deviation from the standard, and sufficient to convince a fair man that a wholly unnecessary inequality has been intentionally provided for. Three, the court will not condemn such an order merely on the ground that another could be made conforming with more literal exactness to the statutory requirements. Four, the word "compact" has various shades of meaning when used in this connection, and permits the consideration in good faith of existing lines, topography, transportation and other factors. It means that the territory shall be closely united, and not necessarily that the residents of each district shall be united in interest. Fifth, no reason appears why a city may not be divided so that one part lies in one district and another part in another district so long as the boundary lines of the district follow the boundaries of the city wards and do not interfere with voting precincts. Six, no unreasonable deviation was shown in this case. Seven, commissioner districts are created merely to define the territory from which the voters are to select commissioners—they have no functions to perform as governmental agencies. Eight, in making the readjustment, the board ought not to be required to eliminate a successful
nominee by so arranging the lines of the districts wherein he lives as to place him outside the boundaries if this can be avoided without creating great disparity in population and territorial equality. And finally, nine, it is within the power of the board to alter the lines of a township at any time without a petition or notice of the change.

In the case of State ex rel. v. Labette County, 114 K. 726, (1923), the question is whether or not a public duty rests upon the commissioners to redistrict the county. It has been repeatedly held that mandamus will not lie at the instance of a private citizen to compel the performance of a purely public duty. Such suit must be brought in the name of the state. The county attorney is authorized to use the name of the state in legal proceedings to enforce the performance of public duties. It is not necessary for the state to show any specific injury in order to enforce an official duty. The court stated that: one, where a county has not been redistricted into commissioner districts for fourteen years, and where the population of one of the districts has increased so that it contains a majority of the entire population of the county, it is the duty of the board to redistrict the county so that the districts will be "as compact and equal in population as possible." Second,
under the above mentioned circumstances, the county attorney is authorized to use the name of the state in legal proceedings in this court to enforce the performance of a public duty by the commissioners of his county. Third, where a duty rests upon a board, that duty may be enforced by mandamus and may not be evaded on the ground that the commissioners have discretion to act.

In *State ex rel. v. Montgomery County Commissioners*, 125 K. 279, (1928), the court stated that in an action to compel a board to redistrict the county into three commissioner districts as compact and equal in population as possible, it is held that under the governing facts in the record, there is palpable disparity of population in the existing districts, and that under the requirements of the statute the county should be redistricted. Also, so far as population is concerned such redistricting should be done on the basis of the last official census of the county, notwithstanding the claim of the commissioners that there are errors in that census.

In *State ex rel. v. Reno County*, 158 K. 573, (1944), the court concurs that when a palpable disparity of population exists it is the duty of the board to redistrict so the districts will be "as compact and equal in population as possible." It also concurred that the last census shall
be the basis for division of population.

In *Hayes v. Rogers*, 24 K. 143, (1880), Harvey County was duly divided into commissioner districts. On October 8, 1879, an order was made by the board making a new arrangement of districts, to take effect upon publication thereof. Publication was made October 30, 1879. The new second district contained none of the territory embraced in the old. The sheriff's proclamation of election was issued before October 8, calling, among other things, for the election of a commissioner from the second district. No new proclamation was issued. On November 3, the day before election, some electors of the old second district attempted to take the order upon appeal to the district court. At the election a full vote for commissioner was cast in the new district, and the party receiving the majority declared elected. In the old second district, about a half vote for commissioner was cast, and the plaintiff received all of this vote in the old district. The court held that the order of the board of October 8 was valid, operative at the ensuing election, and not stayed by the attempted appeal, and that the plaintiff acquired no rights to the office of commissioner by the votes cast in the old second district.

In the case of *Keating v. Marble*, 39 K. 270, (1888), the court stated that the temporary or special county
commissioners appointed by the governor have power to divide the county into commissioner districts, and the commissioners elected to succeed the special or temporary commissioners, after such division, are to be elected by the districts, and not by the voters of the entire county.
CHAPTER III

STATUTES PERTAINING TO THE BOARD OF COUNTY
COMMISSIONERS AS INTERPRETED BY
THE KANSAS SUPREME COURT

This chapter is primarily concerned with cases
pertaining to the powers and duties of the board as con-
tained in the statutes and interpreted by the Supreme Court
of the State of Kansas. The first portion relates to the
duties of the commissioners; their meetings and proceedings,
the keeping of records, appeals from their action and de-
cisions, their liability for their acts, and their admin-
istration of county affairs. The second part of the chapter
pertains to the powers of the commissioners, both statutory
and implied and various court-ruled limitations on these
powers.

Meetings and Proceedings

The Kansas Statutes provide that:

In all counties having more than eight thousand
inhabitants, the board of county commissioners
shall and in all other counties may, meet in
regular session, at the county seat of the county,
on the first Monday in each month during the year,
and in special session on the call of the chairman
for the transaction of any business general or
special, at the request of two members of the
board, as often as the interest and business of
the county may demand. The nature of the busi-
ness to be transacted at any call meeting is to
be governed by the matters and things set out in the call: Provided, that if in the judgment of a majority of said board of county commissioners by resolution regularly adopted, it is believed the interests and business of the county can be properly handled in quarterly meetings, then said board may meet on the first Monday of January, April, July, and October of each year.\(^1\)

The Kansas Statutes further provide that:

In counties having a population over 50,000, the county commissioners shall meet at their usual place of meeting not less than twice each week for the transaction of the business pertaining to their office.\(^2\)

In *Higgins v. Curtis*, 39 K. 283, (1888), the court states that where a board rejects a report of viewers appointed by it to lay out and locate a public road, such board may at the same session reconsider its action by which said report was rejected, and may continue further action thereon to a future day of that session, without thereby losing jurisdiction. Also, the board has the power to make reasonable rules and regulations for the government of its proceedings; and in the absence of proof to the contrary, a reconsideration of its action taken on a former day of the same session, on any matter before the board, will be presumed to have been done in conformity with its

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\(^2\)Ibid.
rules and regulations.

The case of Hundley v. Finney County Commissioners, 2 K.A. 41, (1889), was brought on petition of Hundley, the publisher of a newspaper, who had asked for and received the county printing contract at a regular board meeting. Later the commissioners reconsidered their action and let the contract out on bid to another paper. The plaintiff maintains that his contract was first and binding and the board had no authority to change. The point of law is the same as that of Higgins v. Curtis.

In Masters v. McHolland, 12 K. 23, (1873), the court stated that in proceeding to open and lay out a public road, after the report of the viewers has been filed in the county clerk's office, the commissioners are not compelled to take final action thereon at their first meeting, without losing jurisdiction. Also, the board has power to make rules and regulations for the transaction of its business, and in the absence of proof to the contrary, any postponement will be presumed to have been made in conformity to those rules and regulations.

In the State v. Jefferson County Commissioners, 135 K. 7, (1932), the court stated that when the board acted favorably on a petition for a public road and the report of the viewers on January 8, adding thereto a
conditional provision applicable to a part of the order at least and also adding a definite order adjourning to meet January 12, "to take up matters that might properly come before them at this time," and on January 12, met and set aside the order of four days earlier in the same session, such action on January 12 was not without jurisdiction and the board had not lost jurisdiction of the subject matter or authority to reconsider and set aside its former order at the same session.

In the case of Burroughs v. Norton County Commissioners, 29 K. 196, (1883), the court ruled that the board, after receiving one hundred dollars as compensation for services rendered in attending the regular and special meetings of the board, may receive further compensation for services rendered in attending meetings to equalize assessments and to levy taxes, and to canvass the returns of elections.

In the State ex rel. v. Ferrin, 158 K. 568, (1944), the court stated that the law does not provide a fixed annual salary for a commissioner in counties operating under the county-road-unit plan, but does provide a specified amount per day, which is "full compensation for his services," and that the annual salary "shall not exceed" a stated amount. Since the claims of the commissioners were
for a monthly salary based upon one-twelfth of the maximum annual allowance and based upon the theory of a fixed annual salary, the opinion of the court was that commissioners may receive pay only for meetings attended, unless their claims specifically itemize other services rendered.

Records

The Kansas Statutes provide that:

It shall be the general duty of the county clerk; First, to record, in a book provided for that purpose, all proceedings of the board; second, to make regular entries of their resolutions and decisions in all questions concerning the raising of money; third, to record the vote of each commissioner on any question submitted to the board, if required by any member; fourth, sign all orders issued by the board for the payment of money; fifth, to preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required of him by law.3

The 1957 Supplement to the General Statutes of the State of Kansas further states:

The board of county commissioners of any county in the state may, by resolution, provide for and authorize any officer of the county to photograph, microphotograph or reproduce or have photographed, microphotographed or reproduced on film any of the records, papers or documents which are by law placed in the custody and control of such officer, and to acquire necessary facilities and equipment, and to acquire, maintain and use all such appropriate containers and files as shall be

3Ibid., Sec. 19-305.
necessary to accommodate and preserve the photographs, microphotographs or films so obtained.4

In the case of Mottlin v. Leavenworth County Commissioners, 89 K. 742, (1913), the court stated that the careful conduct of public business by the board requires that a record shall be kept of the reports of its committee, and the action of the board thereon; but an otherwise valid claim is not defeated by the absence of a record of such proceedings. Also, that the approval of such work by the board may be shown as a fact although no formal motion is made, whether recorded or unrecorded.

In City of Leavenworth v. Leing, 6 K. 274, (1870), the court makes this point which has a bearing on this subject—that the records of the board is the best evidence of their acts—as opposed to oral testimony of a member of the board.

In the case of Mosteller v. Mosteller, 40 K. 658, (1889), the question was: are the records of the board competent evidence? The court stated that when a board has allowed a claim, the record thereof in the office of the county clerk is competent evidence tending to show such allowance and the receipt of the same.

In *Gillett v. Lyon County Commissioners*, 18 K. 40, (1877), the court stated that ordinarily, the records of the board furnish the best evidence of the acts and proceedings of such officers.

**Appeals**

The Kansas Statutes provide that:

Any person who shall be aggrieved by any decision of the board may appeal from the decision of such board to the district court of the same county, by causing a written notice of such appeal to be served on the clerk of such board within thirty days after the making of such decision, and executing a bond to such county with sufficient security, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant.5

The Kansas Statutes further provide that:

The clerk of the board upon such appeal being taken, shall immediately give notice thereof to the county attorney, and shall make out a brief return of the proceedings in the case before the board, with their decision thereon, and shall file the same, together with the bond and all the papers in the case in his possession, with the clerk of the district court; and such appeal shall be entered, tried and determined the same as appeals from justices' courts, and costs shall be awarded thereon in like manner.6

In the case of *Dunn v. Morton County Commissioners*, 162 K. 449, (1947), action was brought against the board of Morton County and others to enjoin an election called

6Ibid., Sec. 19-224.
for January 20, 1947, to relocate the county seat. Two propositions suggest themselves, one being the right of plaintiffs to question the official composition of the board and the other the right of plaintiffs to enjoin an election. The court stated that a private person cannot, by virtue of being a resident, a taxpayer and an elector of the county, maintain an action against the board where the relief sought affects merely the interests of the public in general and not those of such private person in particular. Also, a private person cannot by virtue of being a resident, a taxpayer and an elector of the county, maintain an action against the board to question the official composition of that board. Further, it is a principle of general application that courts will not enjoin the calling and holding of an election. Finally, private persons have no standing to question the legality of the official composition of the board by an action against the board to enjoin an election called by that board under a valid statute.

The case of *Bank v. Cloud County Commissioners*, 101 K. 37, (1917), applies to appraisal of diseased cattle, and the main point of interest is a ruling by the court on form of suit. Complaint is made that the order to pay was addressed to the county instead of to the board of county commissioners, but the difference in the form of expression
is not important. The official title of the county as a litigant is "the board of county commissioners", but doubtless any apt designation would serve the same purpose.

In the case of *Routh v. Finney County Commissioners*, 84 K. 25, (1911), the court held that the board in passing upon claims against the county does not exercise a strictly judicial function; the appeal which the statute gives from its disallowance of an account is merely a method of getting the controversy into court. The district court upon such an appeal exercises original jurisdiction.

In *Fulkerson v. Harper County Commissioners*, 31 K. 125, (1883), the question was: will an appeal lie from the board to the district court upon every "decision" made by the board in the exercise of any of its various powers. The court held that the district court is simply a court, and exercises only judicial power; hence, we would suppose that appeals from the board to the district court must be limited to such cases as require the exercise of purely judicial powers, and therefor, that when the board exercises political, legislative, or administrative, or discretionary, or purely ministerial power, no appeal will lie.

In the case of *Bolmar v. Shawnee County Commissioners*, 109 K. 91, (1921), the statute gives to any person who shall be aggrieved by any decision of the board the
right to appeal from the decision to the district court. If private rights would be injured or endangered, then a judicial question is involved.

In the case of **Linton v. Linn County Commissioners**, 7 K. 79, (1871), the question was will an appeal lie from the decision of a board upon a discretionary matter. The court stated that no appeal lies from the decision of the commissioners rejecting an application of a probate judge for an allowance out of the county treasury, under law. The power to make the allowance is a discretionary one, and cannot be exercised by any other tribunal. To permit an appeal from the decision of the board in such case would in effect take from them this discretion and vest it in others.

In the case of **Lampe v. City of Leawood**, 170 K. 251, (1950), the court stated that the legislative functions of the board in incorporating a city of the third class are not subject to appeal to the district court. Also, actions questioning the validity of the proceedings of a board in incorporating a city of the third class cannot be maintained by a private individual. They can only be prosecuted at the instance of the state by its proper officials.

**Liability**

The Kansas Statutes provide that:
Every person who is either elected or
appointed to the office of county commissioneer
of any county in the state of Kansas, who shall
willfully violate any provision of law, or fail
to perform any duty required of him by law,
shall be adjudged guilty of a misdemeanor, and
upon conviction thereof shall be fined in a sum
not less than fifty and not more than one thou-
sand dollars, or by imprisonment in the county
jail not less than thirty days nor more than
one year, or by both such fine and imprison-
ment. 7

The Kansas Statutes further provide that:

Any board of county commissioners or any
county commissioner, or county clerk, who
shall violate any of the provisions of this
act, or neglect or refuse to perform any duty
herein imposed, shall be deemed guilty of a
misdemeanor, and upon conviction thereof in a
court of competent jurisdiction shall be sub-
ject to a fine of not less than ten dollars
nor more than one thousand dollars, and shall
moreover, be removed from office. 8

The Kansas Statutes further provide that:

When a judgment shall be rendered against
the board of any county, or against any county
officer, in an action prosecuted by or against
him, in his name of office, where the same
should be paid by the county, no execution
shall issue upon said judgment, but the same
shall be levied and collected by tax, as other
county charges, and when so collected shall be
paid by the county treasurer to the person to
whom the same shall be adjudged upon the deliv-
ery of a proper voucher therefor. 9

7 Ibid., Sec. 19-233.
8 Ibid., Sec. 19-243.
9 Ibid., Sec. 19-108.
In the case of *Silver v. Clay County Commissioners*, 76 K. 228, (1907), the court ruled that counties are involuntary quasi corporations and are mere auxiliaries to the state government and partake of the state's immunity from liability. They are in no sense business corporations. Also, a county is not liable in damages for the negligent or wrongful acts of its board, unless such liability is expressly imposed by statute or necessarily implied therefrom.

The case of *Woolis v. Montgomery County Commissioners*, 116 K. 96, (1924), concurs with *Silver v. Clay County*. The court ruled that in the absence of some statute imposing liability, a county, being a mere agency of the state, is not liable in damages sustained by private parties through the alleged negligence of its board.

The case of *Thomas v. Ellis County Commissioners*, 91 K. 443, (1914), also concurs with *Silver v. Clay County*.

In the case of *Shaw v. Lyon County Commissioners*, 126 K. 319, (1928), the court ruled that an action against a county based on injuries due to a defective bridge or highway is a liability created by statute, and the period of limitation applicable to it is three years. The county is liable in damages for injuries sustained on account of defects in a highway, provided the chairman of the board had actual notice of the defect for at least five days prior to
the time injury was sustained. The Legislature of 1917 imposed on a county undertaking to improve a highway, the duty to maintain detour signs, warnings, barricades, and red lights at night. Failure to discharge this duty renders the county officers subject to prosecution for misdemeanor, but no civil liability was imposed. The point of law involved in this case is that "the county as an agent of sovereignty" is under no liability for negligence of its officers. It is not subject to actions for damages except so far as the legislature has expressly provided. The result is, failure to discharge the duty imposed by the statute of 1917 merely renders the highway defective, and liability for the defect involved in this case must be enforced under the statute of 1887 which provides for notice to the chairman of the board and since under the facts of the case no notice was given therefore, the county was not liable.

In the case of Kebert v. Wilson County Commissioners, 134 K. 401, (1931), the board was working a prisoner in the county jail at laying a sewer from the jail to the city sewer system and the prisoner was killed on account of the negligence of the person furnished by the board to superintend such work. The court ruled that the board was within their rights to work the prisoner on county projects under their authority over county property and that they are not liable
either as a board or personally, under the general rule that a county is an involuntary quasi corporation and a mere auxiliary of the state government and partakes of the state's immunity from liability in the absence of statute.

The case of Railroad Company v. Saline County Commissioners, 69 K. 278, (1904), was an action involving the interests of a county brought against three persons designated as "county commissioners" of the county instead of suing them as a "board of county commissioners". The wrongs complained of in the petition and sought to be enjoined were charged to have been committed by the county through its duly constituted officers. No objection was made because of the misnomer, and the case was tried as if the board were in court asserting the rights of the county, and in subsequent pleadings and proceedings in the case, the commissioners were described as the "board of county commissioners of the county", and judgment was rendered against the commissioners as a board.

In the case of Shawnee County Commissioners v. Wright, 147 K. 542, (1938), the court stated that when the board was made a defendant in an action brought in a county other than its own, a motion to quash the service of summons on such county board may be properly sustained. In other words, the board of one county cannot be sued in another county.
In the case of Bank v. Morton County Commissioners, 7 K.A. 739, (1888), the commissioners were ordered to levy a special tax each year until the judgment rendered on their liability was paid.

**County administration**

The Kansas Statutes provide that:

Each organized county within this state shall be a body corporate and politic, and as such shall be empowered for the following purposes: First, to sue and be sued; second, to purchase and hold real and personal estate for the use of the county, and lands sold for taxes as provided by law; third, to sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interest of the inhabitants; fourth, to make all contracts and do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers; fifth, to exercise such other and further powers as may be especially conferred by law.10

**Contracts**

The Kansas Statutes provide that:

All contracts for the erection of any courthouse, jail, or any other county building, or the construction of any bridge, the cost of which exceeds one thousand dollars, shall be awarded on a public letting, to the lowest responsible bidder; the board of county commissioners shall, before awarding any contract for any such improvement, publish notice of the letting in some newspaper printed in the county, or, if there be no such newspaper in the county, said board shall cause written or printed notices

10Ibid., Sec. 19-101.
to be posted in at least five conspicuous places in the county for the same length of time, which notice shall specify with reasonable minuteness the character of the improvement contemplated, the time and place at which the contract will be awarded, and invite sealed proposals for the same. Such other notice may also be given as the board may deem necessary or proper.\textsuperscript{11}

In the case of \textit{Neosho County Commissioners v. Stoddart}, 13 K. 207, (1874), the sheriff of Neosho County, on order of the district judge, purchased cocoa matting to be placed on the court room floor. The question before the court was whether the sheriff had the power to purchase the matting, either with or without said order of the district court, and make the county responsible therefor. The county may contract to build, own, provide and keep in repair, the court house, at its own expense. The powers of a county as a body politic and corporate shall be exercised by the board. Neither the district court, nor the sheriff, nor both together, have power without the consent of the commissioners, to contract for the county or to create an indebtedness against the county. The board alone possesses such power, and they alone can create such indebtedness.

In \textit{Smith v. Shawnee County Commissioners}, 21 K. 669, (1879), a small-pox epidemic having broken out in a township,

\textsuperscript{11}\textit{Ibid.}, Sec. 19-214.
the township trustee employed a practicing physician, and
the proprietor of a store, to attend the sick, and supply
them with necessities. While under such employment, the
services were rendered and supplies furnished. The per-
sons so relieved were residents of the township, and the
county was at the time keeping and maintaining a poor
house. The court held that the county was not liable for
such services and supplies and that the trustee had no
power to bind the county by such contract—such power
resides alone in the board.

In the case of Clay County Commissioners v. Renner,
27 K. 225, (1882), the court stated that a township trustee
has the power to bind a county having no poor house to pay
for medical services furnished to a poor person who is a
resident of the county and township and who is temporarily
a pauper.

In the case of Hamilton County Commissioners v.
Webb, 47 K. 104, (1891), the court held that when a con-
tract is entered into between two members of the board on
the one side and an individual on the other side, outside
of their county and without any previous authority having
been given by the board, and such contract has never been
ratified by the board, such contract is void. The contract
in question was made by the board not in legal session,
nor in the county seat, nor by all the members of the board, nor in the presence of the county clerk or county attorney; but it was made by only two members of the board, outside of the county, and without any previous authority from the board, and the contract was not ratified, confirmed or recognized as legal or valid by the board, and such contract was void.

In *Sheldon v. Butler County Commissioners*, 48 K. 356, (1892), the court stated that the boards of the several counties of the state have exclusive control of the expenditures accruing either in the publication of delinquent tax lists, treasurer's notices, or other county printing, and in pursuance of this power, have authority to designate the official newspapers of their respective counties, but such designation cannot continue for a longer period than one year, or so as to bind or tie the hands of their successors in office.

In *Harper County Commissioners v. State*, 47 K. 283, (1891), the court stated that the boards of the several counties have exclusive control over the county printing; and in the absence of fraud or collusion, injunction will not lie to restrain the board from paying for such county printing at legal rates, although other parties may have been willing and did offer to do the county printing for a less sum than the amount fixed by law for doing such work.
In the case of *National Bank v. Peck*, 43 K. 643, (1890), the court stated that no authority is given to the board to designate a bank or banks for the deposit of the public moneys for a definite period of time, nor can the board make any order or contract with the depository that will prevent the designation of a different depository, whenever the board in its discretion determines that the public interest will be best served by such a change. If it had been the purpose of the legislature that commissioners might tie their hands and those of their successors, and bind the county to retain the funds in a certain bank through several changes in the board, it would surely have made it clear in the statute enacted. In the absence of such a statute no such purpose should be inferred.

In the case of *Coffey County Commissioners v. Smith*, 50 K. 350, (1893), the court stated that the board about to be dissolved under operation of law, has no power to enter into a contract designating the official newspaper of the county and providing for the county printing for another year, so as to tie the hands of the new board, about to meet and organize, and thereby prevent the new board from selecting the official paper and contracting for county printing for the current year after its organization.
In *State ex rel. v. Wyandotte County Commissioners*, 131 K. 747, (1930), the court ruled that a board has no authority to enter into a contract binding the county to pay $2,000.00 a year for a period of fifteen years for the rent of an armory to be built in the county by a military organization therein to be used by Kansas' National Guard organizations. Being an annual expenditure, it is within the control of each succeeding board, which may or may not make the payment as its judgment seems best.

In *Verdigris River Drainage District v. State Highway Commission*, 155 K. 323, (1942), the court ruled that counties are given broad powers with reference to construction of drains and ditches necessary in road construction. The statutes must be construed to confer on commissioners the authority to enter into contracts to extend beyond the term of office of the particular officers who made the contracts. Were it not so, no comprehensive program of road building could ever be carried out.

In the case of *Construction Company v. Sedgwick County Commissioners*, 100 K. 394, (1917), the court stated that when public officers (county commissioners) who have entered into a contract in that capacity refuse to recognize its obligations solely by reason of a mistaken view of a pure question of law, their compliance with it may be
enforced by *mandamus*; but, it does not follow that when
the controlling body of a municipality, in the exercise
of its judgment as to public policy, *sees* fit to refuse to
proceed with a contract, preferring to answer in damages,
it can be held to specific performance by a *writ of manda-
mus*. It may be liable, however, for benefits received if
the contract has been carried out.

**Claims**

The Kansas Statutes provide that:

> It shall be the duty of said board of county commissioners to allow monthly *any* and all
> claims against the county, as provided by law, including claims for salaries of all county
> officers.\(^{12}\)

The Kansas Statutes also provide that:

> The board of county commissioners at their July session of each year, or oftener if
> they deem it necessary shall carefully ex-
> amine the county orders returned by the
> county treasurer, by comparing each order with
> the record of orders in the clerk's office.
> They shall cause to be entered on said record,
> opposite to the entry of each order issued,
> the date when the same was canceled. They
> shall also make a list of the orders so can-
> celed, specifying the number, date, amount
> and the person to whom the same was payable,
> and enter the same on the journal of the
> board.\(^{13}\)

The Kansas Statutes also provide that:

\(^{12}\text{*Ibid.*), Sec. 19-208.}\n
\(^{13}\text{*Ibid.*), Sec. 19-226.}\n
The board of county commissioners shall publish a statement at the close of each regular or special meeting of the sums of all moneys paid and for what purpose; to be published by some paper of general circulation in the county. Also, they must publish a statement of the estimate of expenditures for the various purposes upon which they based their levy of a tax for the various purposes of revenue.14

The 1957 Supplement to the General Statutes of the State of Kansas further states:

No account shall be allowed by the board of county commissioners unless the same shall be made out in separate items and the nature of each item stated; and where no specific fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account shall be specified, which account so made out shall be certified that the same is just and correct. Provided: nothing in this section be construed to prevent the board from disallowing an account in part or whole or from requiring further evidence of the truth and propriety thereof.15

In the case of Atchison County v. Tomlinson, 9 K. 167, (1972), the court decided that no account against a county should be allowed by the commissioners, nor by the district court on appeal, unless the account is made out in separate items and the nature of each item stated; and when the account is for services or labor,

14Ibid., Sec. 19-228.

15Corrick, 1957 Supplement, op. cit., Sec. 19-221.
but not for specific fees, such as are allowed by law, the time actually and necessarily devoted to the performance of such service or labor should be specified. No claim for additional services may be charged by a sheriff above the statutory amount for the feeding and care of prisoners.

In *State ex rel. v. Bonebrake*, 4 K. 213, (1868), the court stated that the issuance of county orders for the claims of a county attorney for allowances in criminal cases made by the judge of the district court cannot be enforced by *mandamus*, but must, like all other claims against a county, be audited by the commissioners.

In the case of *Gillett v. Lyon County Commissioners*, 18 K. 410, (1877), the court stated that when a claim against a county for money is properly presented to the board and they fail or refuse to take any action thereon, or, taking action thereon fail or refuse to allow the same, the claimant may then commence an original action thereon against the county for the amount of his claim.

*Skinner v. Cowley County Commissioners*, 63 K. 557, (1901), concurs with the above cited case, that although statute provides for claims to be presented to the board, such presentation need not be alleged in action thereon.

In the case of *Jefferson County Commissioners v. Patrick*, 12 K. 605, (1874), the court stated that when an
account has been presented against a county, and allowed and paid, and thereafter the claimant presents a claim for fees for services apparently included in the first account, the claimant is not concluded thereby; but may show, as a matter of fact, what services were covered by the charges in the first account. Also, a party who has obtained from the county, by the allowance of the board, fees, costs, or other allowances, which were not authorized by law, is, to the amount thus obtained, the county's debtor.

In the case of Leavenworth County Commissioners v. Brewer, 9 K. 210, (1872), the commissioners are virtually a board of arbitrators, to which all parties having claims must submit such claims for examination, audit, and allowance. They are a judicial body, constituted by law to decide on all matters of account between individuals and the county they represent and their action in auditing and allowing a claim is a judicial act having the force and effect of a judgment. By statute the board is constituted a court, with judicial authority to "examine, settle, and allow" all accounts chargeable against the county and are authorized to hear and require other or further evidence of the truth and propriety of the account than the verified affidavit required to be made by the party asking the allow-
ance, and the board may disallow any account, in whole or in part. Further, a county is a quasi corporation which may sue and be sued as other corporations and the board is the representative—the financial agent—the business manager—of such corporation; and in its name all suits in which the county is interested must be prosecuted and defended. A claim presented to the board is simply a claim presented to the county and the refusal by it to pay is simply a refusal of the county to pay. When a county refuses to pay a claim against it, there seems to be no good reason why it may not be sued as well as any other corporation or as any individual under like circumstances. It is true that the commissioners in some cases act in a kind of quasi judicial character, and when they do so act their determinations are final unless appealed from.

In the case of Salthouse v. McPherson County Commissioners, 115 K. 668, (1929), the court decided that a claim against a county for having collected an illegal tax is an "account" which may be presented to the board for allowance or rejection, an appeal to the district court lying from its action.

In the case of Atchinson, Topeka and Santa Fe Railway Company v. Montgomery County Commissioners, 121 K. 428, (1926), the court decided that a claim against a
county for a refund of alleged illegal taxes should be presented for audit and allowance. The county clerk as clerk of the board must certify to the auditor, on or before the first Monday in each month, all claims and demands against the county of file in his office.

In *State v. Scates*, 43 K. 330, (1890), the court ruled that when a board upon advice of able and competent attorneys at law, allows certain claims which are not strictly legal charges against the county, its official action in so doing will not render the commissioners liable to the charge of corruption, or forfeiture of office, if the allowances were honestly made and the board acted merely upon a mistake or error of law as to the liability of the county.

**Warrants**

The 1957 Supplement to the General Statutes of the State of Kansas states:

No warrants shall be issued except under due authority as provided by law; and no warrants shall be issued or authorized by any board of county commissioners . . . except on an itemized account certified by the claimant to be true and correct and that the same is due and unpaid.16

In the case of *State v. Pierce*, 52 K. 521, (1893), the court stated that where no account, claim or demand

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is filed or presented against the county, and the board unlawfully issues a county warrant or order in violation of statute, such action is an offense within the meaning of the statute, and the members of the board may be punished as provided by law.

In the case of State ex rel. v. Thomas County Commissioners, 122 K. 850, (1927), the court ruled that mandamus will not lie to compel the board to issue county warrants against the county general fund to pay a bounty on jack rabbits, when the claims for such bounty aggregate such an extraordinary sum that they cannot be paid out of that fund as an incidental expense of conducting the governmental business of the county, and when the general fund is exhausted. Further, it is a very serious offense for a board to issue warrants in any one fiscal year in excess of the amount which the tax levied to meet such warrants will produce revenue to pay.

In the case of Bank v. Reilly, 97 K. 817, (1916), the court ruled that the issue of warrants in any one fiscal year to defray the general expenses of the county is limited to the maximum revenues which the levy for that fiscal year will produce, and is determinable by a calculation applying the levy to the assessed valuation of the county. The board has no power to issue county warrants for the
payment of current expenses in excess of the revenues to be derived from the general tax levy made to meet such expenses. The board has no power to issue county warrants in any one year to be redeemed by anticipating and impairing the revenue of succeeding years. The board of Leavenworth County has no power to change the beginning of the fiscal year from the second Tuesday of October, 1914, to January 1, 1915, to serve the temporary financial convenience of the county. When county warrants have been issued in excess of the general maximum revenue fund for the current fiscal year, but for which the county got value received, they can be paid in two ways: one, by the collection of delinquent taxes and miscellaneous items which may inure to the general revenue fund, or two, by application to the legislature and obtaining its sanction authorizing their payment out of later general revenues of the county. When county warrants are void only because issued in excess of the maximum revenues derivable from the general levy for the current fiscal year, the holders of such warrants are subrogated to the rights of the original creditors whose claims against the county were the basis of such void warrants, and if the claims were lawful, the county is liable to the subrogated holders of such claims and provisions may be made to meet their payment in future annual levies,
but no such future annual levy can exceed the maximum fixed by statute.

In the case of Leavenworth County Commissioners v. Keller, 6 K. 510, (1870), the court ruled that an action can be maintained on a county warrant against the county. Also, an action on such a warrant is liable to be defeated by showing that the board had no authority to make the allowance on which the warrant was issued, or for want of some prerequisite step enjoined by law, or for want of consideration, or mistake by the board, or for fraud in obtaining the allowance. A warrant signed by the chairman of the board, and a few days later signed, and the county seal attached by the clerk, who had succeeded to the office after the chairman had signed it, is a good warrant.

In Haun v. Lane County Commissioners, 138 K. 656, (1933), the validity of a contract for the sale of warrants, the proceeds to be used in the erection of a courthouse and jail was considered. The court held that under the provisions of the contract several of the provisions were beyond the power of the board. First, if carried out the board would issue the warrants for sums in excess of the contract price due the contractor, which is a direct violation of Sec. 19-242 of the Revised Statutes (1923), which provides "It shall be unlawful for any board of county
commissioners to allow any greater sum on any account, claim or demand against the county, than the amount actually due thereon, dollar for dollar." Second, another feature of the contract is that the power and function of the commissioners is interfered with and limited by the provision that the contract is to be let to a contractor satisfactory to both parties. Third, the conversion of warrants into bonds provided for in the contract is left to the option and discretion of the broker, and not to the board authorized to transact the business of the county and to manage its financial affairs and the board has no power to delegate this authority. Finally, the conversion of the warrants into bonds payable in installments in future years possess all the features of borrowing money which requires the approval of the electors. The contract in this case was held void on these counts.

Bonds

The Kansas Statutes provide that:

The commissioners have the power to borrow money upon the credit of the county a sum sufficient for the erection of county buildings, or to meet the current expenses of the county in case of a deficit in the county revenue.\footnote{Corrick, General Statutes, 1949, op. cit., Sec. 19-212.}
The commissioners shall not borrow money for the purposes specified in the previous law, without first having committed the question of such loan to a vote of the electors of the county. 18

In the case of State ex rel. v. McCrillus, 4 K. 250, (1868), the court ruled that the bonds of a county are ascertained claims. The board has no power to audit or allow them, or to disallow them. They are to be paid upon presentation to the treasurer.

In Doty v. Ellsbree, 11 K. 164, (1873), the court ruled that the commissioners have power, after a vote of the people in favor thereof, to borrow money to meet the current expenses of the county in case of a deficit in the county revenue, and to issue the bonds of the county therefore.

In the case Carpenter v. Hindman, 32 K. 601, (1884), the board entered into an agreement with the holder of a large amount of county indebtedness, for a compromise, at a price agreed upon, to be paid in money on the surrender of the indebtedness. In order to raise the money, the commissioners entered into an agreement with a company to take the bonds of the county issued under the Laws of 1879, which enables counties to refund their indebtedness and to

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18Ibid., Sec. 19-213.
issue new bonds, in an amount sufficient to pay the money agreed upon in the compromise. The court held that the statutes had been complied with and the bonds were valid.

In State ex rel. v. Raub, 106 K. 196, (1920), the court held that the commissioners may issue highway bonds from time to time as required as the preliminary work progresses, after the estimates for the work have been made and filed and the cost approximately determined.

Rowland v. Reno County Commissioners, 108 K. 440, (1921), concurs with the previously cited case. The law authorizes the issuance of bonds to provide for the payment of the proportion of the cost of road improvements chargeable against the county. It is then expected that funds be raised by taxation sufficient to pay such bonds. Even if by reason of the bonds being sold at a discount, the taxes levied to meet the principle shall exceed the county's share of the cost of the improvement.

In the case of Johnson v. Wilson County Commissioners, 34 K. 670, (1885), the court stated that the board has the power to borrow upon the credit of a county, a sum sufficient for the erection of county buildings, but the commissioners cannot borrow the money for such purpose without first submitting the question of the loan to a vote of the electors of the county, and in such a case, it is not necessary that
the commissioners should also submit the question of building permanent county buildings as required by law.

**Taxation**

The Kansas Statutes provide that:

The board of county commissioners of each county shall constitute a county board of equalization and the county clerk shall be the clerk of said board.\(^{19}\)

The Kansas Statutes further provide that:

The board of county commissioners shall "apportion and order the levying of taxes" as provided by law.\(^{20}\)

In *State ex rel. v. Peal*, 136 K. 136, (1932), the court ruled that in accordance with Sec. 19-241 of the Revised Statutes (1868), "It shall be the duty of the board to levy in each year, in addition to the other taxes a county tax sufficient to defray all county charges and expenses incurred during such year." The court stated that the power to levy taxes was never intended for the purpose of accumulating funds for the remote future, or for contingencies which may never occur. However, the affairs of the county should be so managed as to have in its treasury at all times sufficient funds to meet its

\(^{19}\text{Ibid.}, \text{ Sec. 79-1601.}\

\(^{20}\text{Ibid.}, \text{ Sec. 19-212.}
demands and as little in excess thereof as the proper handling of the county's business will permit. This, of necessity, vests the board with discretionary power. The courts will interfere only to prevent abuse of this discretionary power, not to restrain its reasonable exercise.

In the case of State ex rel. v. Marion County Commissioners, 21 K. 308, (1879), the court decided that the board has no power to appropriate the fund raised by taxation to defray county charges and expenses of the current year to the erection of permanent county buildings. Ample provisions are made in the statute for the creation of special funds to construct permanent county buildings, by authorizing the commissioners to borrow money, and assess taxes therefor, after the consent of the electors, in the mode pointed out by the statute.

In the case, Connelly v. Trego County Commissioners, 64 K. 168, (1902), the court ruled that the taxing of the county is authorized to the board and to no other person.

As previously cited in Burroughs v. Norton County Commissioners, 29 K. 196, (1883), the court decided the board may receive additional compensation when meeting as the board of tax equalization.

In Coal Company v. Emlen, 44 K. 117, (1890), the court ruled that the commissioners sitting as a board of
equalization may raise or lower the valuation placed upon the personal property of an owner, but they have no power to add to a personal property statement as returned by the assessor any property not already listed, for the reason that there is no express power given them to do so. There was no want of power for the proper authorities to secure an accurate assessment.

In Brown v. State, 73 K. 69, (1906), the court stated that while the commissioners are interested and concerned in the matter of the collection of taxes, it is not charged with the duty of seeing to it that all such property was assessed and placed upon the taxrolls, because those duties devolve upon other officers. In the absence of express power pertaining to taxation the board is necessarily held to limited powers.

In Greenwood County Commissioners v. School District, 139 K. 297, (1934), the court stated that the board is the proper party to bring action to recover taxes. The city and school district in this case were entitled to set off against the county's claims their respective proportionate share of the interest on delinquent tax collections, even though the county had advanced to them the full amount of their tax levies, and the city and school district were not kept waiting until such delinquent taxes were collected.
In Ness County Commissioners v. Light and Ice Company, 101 K. 501, (1922), the court held that the entire subject of taxation is statutory; the method prescribed for the recovery of delinquent taxes is statutory, and it does not exist apart from the statute.

Property

The Kansas Statutes provide that:

The county commissioners are to make such orders concerning the buildings belonging to the county as they may deem expedient, to purchase sites for and build and keep in repair county buildings and in case there are no county buildings, to provide suitable rooms for county purposes.\(^2\)

In Brown County Commissioners v. Barnett, 14 K. 627, (1886), the question was: may a board rent rooms to be used for county officers if the county has no buildings reasonable or suitable or adequate for that purpose. The court ruled that the commissioners of a county are empowered, in the event the county does not own buildings reasonably suited or adequate therefor, to rent any required number of rooms for county offices, and to bind the county by a contract therefor; and under all ordinary circumstances the judgment of the commissioners is conclusive as to the unfitness or insufficiency of the buildings owned by the county.

\(^2\)Ibid., Sec. 19-212.
In the case of **Stafford County Commissioners v. State ex rel.,** 40 K. 21, (1888), the court ruled that in a county without a courthouse, it is the duty of the county clerk to attend the sessions of the board in any suitable room at the county seat the board may designate. When the citizens of a county seat town donated some lots with a building thereon to the board for a courthouse, and board, under protest, held its session in the office of the county clerk which he had taken up, the court held that this was sufficient acceptance of the building as a courthouse. The board has the care and charge of the county property, and when it occupies the clerk's office under its protest, such protest is without legal effect, being the protest of a superior to a subordinate officer.

In the case of **Pan Kratz v. Bock,** 126 K. 378, (1928), action was brought to enjoin the board from wrecking and removing an old building used as a courthouse. The evidence and admissions of the parties was considered and held sufficient to support a finding that the building was not of a value exceeding $500.00. Thus, the building could be razed without the unanimous vote of the board.

In the case of **State ex rel. v. Marion County Commissioners,** 21 K. 320, (1879), the court ruled that when a board has executed, on behalf of a county, a con-
tract for the erection of permanent county buildings, which is void for want of powers on the part of the commissioners, and are carrying out the terms of the contract at the cost of the county, and using the general revenue fund to pay for it, they may be restrained by injunction from erecting said buildings and from drawing any warrants on the county treasurer therefor.

In *Beck v. Shawnee County Commissioners*, 105 K. 325, (1919), the court stated that the law provides for a county settlement of public welfare institutions in certain counties. The settlement is "ten acres of land situated as near as practicable to the county seat" as defined by the legislature. The board has no general discretion over the subject of locating the settlement. The function of the commissioners is limited to determining the fact of practicable nearness to the county seat.

In *State ex rel. v. Rawlins County Commissioners*, 44 K. 528, (1890), the court ruled that a petition to the board to order an election to relocate the county seat, when said county seat had been originally located by a vote of the people of the county, and had remained for more than five years, must contain three-fifths of the names of the electors of the county as shown by the last assessment rolls of both real and personal property.
In the case of *State ex rel. v. Stock*, 38 K. 154, (1887), the court ruled that the commissioners had no discretion but to obey the petition for relocation of the county seat, if it is in compliance with statute.

The case *In re County Seat of Linn County*, 15 K. 186, (1875), included these facts: a petition for the relocation of a county seat had been presented to the board and acted on by them, an election ordered, two elections held, the votes canvassed, and the place receiving the majority of the votes at the second election declared the county seat.

When the legislature has provided an election as the means of ascertaining the wishes of the electors of a county in reference to a change of the county seat, and this question is the only one submitted to a vote, and no provision has been made for a registration and no other list or roll designated as the evidence of the number of electors, it may provide that the place receiving a majority of the votes cast shall become the county seat, notwithstanding the clause in the Constitution which reads that no county seat shall be changed without the consent of a majority of the electors of the county. In such case the courts will not go behind the number of votes cast, and inquire whether or not as a matter of fact, all legal electors voted, or whether those not voting consented to the change.
The case of *State ex rel. v. Harwi*, 36 K. 588, (1887), stated that when the county seat of a county had been permanently located by a vote of the electors of the county, at a place not incorporated, but mentioned and described in a town plot, duly executed, acknowledged and filed, the board of the county has no authority, in the absence of any vote therefor, to arbitrarily remove the county seat, or the county offices, or the books, records, etc. belonging to the county to an addition subsequently laid out and plotted adjoining the original town site, where the county seat was located, although such addition is subsequently incorporated with the original townsit e.

In *State ex rel. v. Atchison County Commissioners*, 44 K. 186, (1890), the court ruled that when a board fixes the site for the county buildings it has then exhausted all its power to locate the county buildings, unless at some later time by an election or legislation they should be given the power to do so.

**Other county officers**

As the administrative agency for the county and due to the numerous incidental statutory references to the board and the other county officers, it is assumed in most of the cases that the commissioners have some limited powers pertaining to the other county officers.
In the case of *Morrill v. Douglass*, 14 K. 228, (1875), the court stated that the commissioners it is true, are in a certain sense the general agents of the county; that is, to them is committed the general superintendence of and management of the affairs of the county. There are, however, many limitations upon this general control. One is that they cannot interfere with duties specifically assigned to a given officer.

In the case of *Graham v. Cowgill*, 13 K. 90, (1874), the court stated that in the absence of any judgment against a county treasurer on his official bond, the board cannot remove such officer from office, and fill his place by the appointment of some other person. The office becomes vacant only by the judgment of a court of competent jurisdiction.

In *Rossel v. Greenwood County Commissioners*, 9 K.A. 638, (1899), the court ruled that in the event the office of county treasurer shall become vacant, the board shall appoint a suitable person to perform the duties of such treasurer until such vacancy shall be filled or such disability removed.

In *Connelly v. Trego County Commissioners*, 64 K. 168, (1902), the question was: has the county clerk the authority to levy taxes? The court ruled that the law delegates authority to the board and to no other person, to levy county
taxes. A county clerk has no authority to levy a tax on the property of an individual, and such levy when made is void. Further, a tax levied without authority of law and involuntarily paid may be recovered back in an action for that purpose.

In Startin v. Shell, 87 K. 485, (1912), the court stated that the appointment of county auditor is by statute given to the court which is construed to mean district court. The Laws of 1872, Sec. 67-1, provides for the confirmation of such appointment by the board. The section was later amended at various times and the provision requiring confirmation stricken out; however, the language of section two of the same law was never changed and still reads, "and after his confirmation by the county board, as provided herein". This provision is an obvious oversight of the legislature and the confirmation of the board is not necessary.

Roth v. Ness County Commissioners, 69 K. 667, (1904), was a case wherein the county treasurer employed a deputy to assist him in the performance of his duties. The board neither authorized the employment nor contracted to pay for the services rendered. The court denied relief on the claim of the deputy for payment on the ground that it was entirely discretionary with the board to allow clerk hire. The
treasurer maintained that the word "may" as contained in
the statute, "the county board of commissioners may allow
clerk hire", means "must allow"; the court ruled that the
word "may" in the connection referred to is purely per-
missive.

In Mitchell v. Leavenworth County Commissioners,
18 K. 188, (1877), the court ruled that the board has the
authority to make contracts for the services of guards at
the county jail of that county, when in their judgment
there exists a public necessity for the employment of per-
sons for such purpose, and the commissioners sanction of
the sheriff's hiring of such prison guards raises an im-
plied contract to pay for their services.

In the case State ex rel. v. Sedgwick County Com-
mis sioners, 150 K. 143, (1939), the court ruled that the
board is without power under the statutes to make contracts
of employment with individuals to perform duties imposed by
law upon the regularly constituted officers in the matter
of discovering and listing property for taxation purposes.

The court stated in Hill v. Republic County Com-
mis sioners, 99 K. 49, (1916), that without an order from
the board or a contract with the board, a county officer
cannot charge the county for services voluntarily performed
by him which were not within the ordinary scope of his own
official duties. A county officer has no claim against the county for the cost of articles which he has purchased for the use of his office without the sanction of the board.

The case of Atchinson County v. Tomlinson, 9 K. 167, (1872), has been previously cited. In this case, the court ruled that when the sheriff has been allowed statutory fees for feeding prisoners, commissioners cannot allow extra pay.

In Heinz v. Shawnee County Commissioners, 136 K. 104, (1932), the court ruled that "in his field the county attorney is just as independent as the board is in its field. It may be necessary for the county attorney to act contrary to the desires of the county board, or even to sue the board." So far as court work is concerned, the official duty of the county attorney extends no further than to appear and prosecute and defend in the courts of that county. If the commissioners wish to hire the county attorney to represent them in another court he may do so, but he is entitled to his fee for services rendered outside of his official duties.

In Neosho County Commissioners v. Leahy, 24 K. 41, (1880), the court ruled that the board may require an officer to give additional bond or security when it is deemed necessary. This conclusion does not place a county
officer within the control of the whim, caprice, or political feeling of any commissioner, as an additional bond cannot be demanded except for some reasonable cause, and the law will protect a county official from an arbitrary or unjust demand, or an arbitrary or unjust removal.

In Naylor v. Gary County Commissioners, 8 K.A. 761, (1899), the court ruled that under Paragraph 1799 of the General Statutes of 1889, "the county attorneys shall be allowed by the boards as compensation for their services, $400.00 as salary per year, in counties of from 1000 to 5000 inhabitants." They "shall be allowed" means "may be allowed" and the maximum they may allow is $400.00. Thus, it was held that in counties of from 1000 to 5000 population, the board had the discretion to fix such salary at $400.00 or less.

In Cornelius v. Robson, 103 K. 467, (1918), the facts stated that on May 8, 1917, the defendant resigned the office of county surveyor, and the board accepted his resignation and appointed him county engineer. The appointment was not approved by the state highway commission. On receiving advice from the defendant of such resignation the governor commissioned the plaintiff county surveyor, who filed his official bond. The court held that the office of county surveyor became vacant, and neither of the parties is entitled thereto.
Statutory powers

The 1957 Supplement to the General Statutes of the State of Kansas provides the following in relation to the powers and limitations on powers of the board:

The board of county commissioners of each county shall have the power at any meeting; First. To make such orders concerning the property belonging to the county as they may deem expedient. Second. To examine and settle all the accounts of the receipts and expenses of the county and to examine and settle and allow all accounts chargeable against the county; and when so settled, they may issue county orders therefor, as provided by law. Third. To purchase sites for and to build and keep in repair county buildings, and cause the same to be insured in the name of the county treasurer for the benefit of the county; and in case there are no county buildings, to provide suitable rooms for county purposes. Fourth. Apportion and order the levying of taxes as provided by law and to borrow upon the credit of the county a sum sufficient for the erection of county buildings, or to meet the current expenses of the county in case of a deficit in the county revenue. Fifth. To represent the county and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law. Sixth. To set off, organize, and change the boundaries of townships in their respective counties, to designate and give names therefor, and to appoint township officers for such new townships which officers shall serve until the next general election; to fix the time and place of holding the first election therein. Seventh. To establish one or more election precincts in any township, as the convenience of the inhabitants thereof may require. Eighth. To lay out, alter or discontinue any road running through one or more townships in such county, and also to perform such other duties respecting roads as may be provided by law. Ninth. To alter or change the route of any state road within their respective counties. Tenth. To grant licenses for keeping ferries and bridges in their respective counties, and such other licenses prescribed by law.
Eleventh. To enter into contracts with any landowners for the construction and maintenance of underpasses, bridges and drainageways under and across any county road in connection with the locating, opening, laying out, construction or alteration of any county road running across or through such landowners land, whenever in the judgment of the board such contract is to the best interests of the county. Any such contract entered into by the board shall be binding on the subsequent boards and shall not be terminated without the written consent of said landowner or his heirs or assigns. Twelfth. To perform such other duties as are or may be prescribed by law.22

In the case of Felker v. Elk County Commissioners, 70 K. 96, (1904), the court ruled that the board is a statutory organization which has no power except such as is granted in express terms, or is necessarily implied in or incident to the powers expressed. The board is only charged with the administration of civil affairs, and the offering of rewards for the detection and conviction of those who offend against the laws of the state is not an ordinary corporate duty, nor is it incident to the administration of county affairs.

State ex rel. v. Mowry, 119 K. 74, (1925), concurs with Felker v. Elk County Commissioners, and pertains to the power of the board to act upon appeals from orders of the county superintendent. This power is limited and restricted, being only a reviewing body. Its function is to determine whether or not the decisions of the county

22 Corrick, 1957 Supplement, op. cit., Sec. 19-212.
superintendent shall be sustained.

In *Troy v. Doniphan County Commissioners*, 32 K. 507, (1884), the court ruled that although the board threatens to over-step their powers and act outside the law, no action may be brought; the presumption is, that when they take final action, they will act in accordance with the law.

In *Stafford County Commissioners v. State*, 40 K. 21, (1888), cited earlier, the commissioners were said to have charge of county property, as provided by statute. They have full freedom and power to hold their sessions wherever they see fit, provided they are held at the county seat.

In *State v. Kennedy*, 82 K. 373, (1910), the questions involved were numerous. One, what authority has a single member in the performance of official services outside of board meeting? Two, what compensation may they receive? Three, what constitutes corruption, proof of corruption, negligence or refusal to perform official duty? Four, what are the grounds for forfeiture of office? The court ruled that the board must determine what bridges shall be repaired at the expense of the county, the plans to be followed, the material to be used and the cost of the work, and must make appropriations to pay for the work. It may appoint a superintendent of repair for each bridge, but is not obliged to do so, and may itself exercise general
oversight and supervision of the execution of contracts for such work. Also, the efficient discharge of its duties may and frequently does, require the board to perform official services outside of board meetings. In some instances, the joint observation and combined participation of all the members may not be necessary, and in such a case a single member, acting as a committee of the board, may render lawful services as a commissioner. Bridge repair work and oversight of the poor from may afford opportunity for such services. The statutes of this state do not limit the compensation of members of the board to pay for services rendered at board meetings, and single members performing services of the kind before described may be paid therefor the per diem compensation provided by statute, and statutory mileage. Providing that any commissioner shall corruptly perform any duty he shall forfeit his office and be removed; "corruption" involves the intentional disregard of law from improper motives and in order that the payment of excessive or illegal demands against the county may be corrupt, the commissioner must have proposed to violate his official duty, defraud the county by misappropriating its funds and secure to himself or to someone else, unlawful gain. In action to remove a commissioner on the grounds that he corruptly performed his duties, the burden
of showing corruption rests upon the state, and the commissioner is not called upon to justify himself until something evidencing corruption is offered. Occasional departures by the board from the statute relating to the allowance of claims against the county, as that claims were not verified, occurring through mere inadvertence, without wrongful intent and under circumstances exposing the county to no imposition or injury, do not constitute corruption. The court further stated that the payment of claims which were not sufficiently itemized, occurring through a misinterpretation of the statute relating to that subject, does not constitute corruption, where the board acts in good faith and relies upon the advice of the county attorney that the claims were sufficiently itemized. Also, providing that any commissioner or other county officer shall neglect or refuse to perform any act which it is his duty to perform, he shall forfeit his office and be removed, the duty must be personal and the act must be one which the officer has the legal capacity and authority to perform or he can not be guilty of neglect. It is not every oversight or omission within the strict letter of the law which will entail forfeiture of office. The purpose of the statute is to prevent persons from continuing to hold office whose inattention to duty, either because of its
habitualness or its gravity, endangers the public welfare, and the neglect contemplated must disclose either willfulness or indifference to duty so persistent or in affairs of such importance that the safety of the public interests is threatened.

In *Cunningham v. Blythe*, 155 K. 689, (1942), the court held that commissioners have only such powers as are conferred upon them by statute. Also, commissioners are not vested with any general jurisdiction over collection of taxes. Also, commissioners have no jurisdiction to take possession of real estate until three years have elapsed after such property has been bid in by the county at sale for delinquent taxes as provided by law. Further, the power conferred upon public officers to exercise judgment or discretion attaches only when jurisdiction has been acquired; it cannot be used to create jurisdiction. Finally, when a public officer performs, without jurisdiction, a quasi judicial act, he is not exempt from liability to persons injured thereby, at least unless the subject matter of such act belongs to a class over which he has jurisdiction and the act is performed under color of jurisdiction.

In *State v. Scott County*, 58 K. 491, (1897), the court stated that the Constitution provides for establishing county seats, and the statutes requires that the meetings of the board for the transaction of county business shall be
held at the county seat. In fact, every county officer is required to keep his office at the seat of justice of his county. The Constitution and statutes state that county commissioners are officers of the county, and they cannot convene as a board or exercise the powers conferred on the board, outside the territorial limits of the county.

In *State ex rel. v. Hardwick*, 144 K. 3, (1936), the statute in question was held unconstitutional because the legislature conferred powers upon the board which were not wholly a matter subject of local legislation. This act is one of a general nature, but so drawn, that by reason of the delegation of power to legislate there is a lack of uniform operation throughout the state.

In *Loper v. State*, 48 K. 540, (1892), the court stated that the commissioners as supervisors and administrators of the county business may for the preservation and protection of public funds, suspend a county treasurer from his office, and appoint another person as acting county treasurer to do and perform all of the duties and assume all the responsibilities of the office. If it appears at the time of such order that the county treasurer is a defaulter, such suspension and the appointment of an acting county treasurer is such a removal of the county treasurer from office as requires him, by law, to deliver to the
acting county treasurer as his successor, all the books, papers, and moneys in his hands by virtue of his office.

In State v. Corning, 44 K. 442, (1890), the court stated that it is a misdemeanor for a board or the chairman of the board, to issue county warrants upon an account, claim, or demand for more than the amount allowed by the board. The chairman of the board is charged in this case with unlawfully, willfully, and corruptly voting for and allowing $2,035.00 for the construction of a bridge when the contract price was $1,850.00. The court ruled that in absence of proof that the board voted for and allowed $1,850.00 instead of $2,035.00 for the claim, the charge is not justified. The court also stated that in a county having less than 10,000 inhabitants, the compensation of the members of the board for their services in attending the regular and special meetings of the board cannot exceed the sum of $100.00 for each commissioner in any one year.

In the case of State ex rel. v. Duncan, 134 K. 85, (1931), an action brought to oust an unfaithful officer was held to be civil, not criminal, in character and the defendant cannot claim immunity on the ground that he was compelled to testify in the attorney general's inquisition concerning his official conduct involved in the action. Also, the commissioners have no jurisdiction or control over the
taking of the enumeration of the county, and have no authority to amend or to revise it. Considering these facts, together with all of the other circumstances in the case such conduct cannot be reconciled with good faith. Mistakes of judgment should be excused, but when commissioners take charge of enumeration books and without any authority assume to revise the work of the assessors and add to the enumeration the names of persons whom they must have known, or with any reasonable degree of inquiry could have ascertained, could not under any stretch of the imagination be listed as residents of the county, the presumption of good faith is overcome and the court was fully warranted in finding from the evidence that the purpose of the defendants in making the additions and changes in the enumeration books was to prevent the population from being certified below 20,000 and to avoid a decrease in their salaries. The court was brought to the conclusion that the defendants were guilty of willful misconduct in office within the meaning of the statute.

In State ex rel. v. Howard, 123 K. 432, (1927), the court stated that it is willful misconduct in office for a board to join in the purchase of a second-hand tractor and pay therefor $6,600.00--the price of a new one--when they know that the tractor can be purchased from its owner.
for $4,500.00. The Revised Statutes of 1923, Sec. 60-1609, states, "... every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township, or city who shall willfully misconduct himself in office, or who shall willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state of Kansas ... shall forfeit his office and shall be ousted from such office."

In Youmans v. Wyandotte County Commissioners, 68 K. 104, (1903), the court ruled that when statute provides for the board to employ additional help, it is not the court's place to decide the wisdom of their judgment.

Implied powers

In Brown County Commissioners v. Barnett, 14 K. 474, (1875), previously cited, the point which applies here is a ruling that "the letter killeth, while the spirit maketh alive." Therefore, if action is justified and in absence of statute to the contrary, it should receive a more liberal construction.

In State ex rel. v. Younkin, 108 K. 634, (1921), the court stated that when, by statute, official powers and duties are conferred or imposed upon a public officer or official board, the only implied powers possessed by such
officer or board are those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred and imposed.

In the case of *Womar v. Aldridge*, 155 K. 446, (1942), the court ruled that for the most part the means by which the board may discharge the many and varied duties imposed on them are supplied by express statutes, although occasionally the courts have had to concede that there is a narrow field in which the doctrine of implied powers must be permitted to operate.

In *Edwards County Commissioners v. Simmons*, 159 K. 41, (1944), the questions were: one, is a contract made with an attorney by a prior board valid? Two, if valid during the term of the board making the contract is it binding upon subsequent boards? And three, had the plaintiff board by its acts adopted or ratified the contract? The court ruled that a legislative intent is indicated; otherwise, an express grant of powers to an officer or governmental board carries with it such implied powers as are necessary for the due and effective exercise of the powers expressly granted and the discharge of the duties imposed. Also, under the authority granted to boards by statute to institute actions or to intervene in actions brought in connection with the collection of delinquent taxes, such boards may employ attorneys
when such employment is necessary for effectuating the purpose of the statute. Further, in determining the question of validity of a contract made by a board extending beyond the official term of the contracting board or officials, one test generally applied is whether the contract is an attempt to bind successors in matters incident to such successors administration and responsibilities, or whether it is a commitment of a sort reasonably necessary for protection of the public property, interests or affairs being administered. In the former case, the contract is generally held to be invalid and in the latter valid. Finally, the court held, a county attorney is under no obligation to perform legal services for the county outside of the county.

In Marshall County Commissioners v. Cummings, 140 K. 256, (1934), the court stated that a misinterpretation of law by the board could not and will not be held to affect positive statutory provisions, requirements and results. A commissioner cannot be a judge in his own case, procure decisions favorable to himself as to his right to additional compensation, collect that compensation, all in derogation of positive statutory provision to the contrary, and then assert that the county is remediless. If such a doctrine were recognized, it would open the door to fraud in the conduct of the county's business by its board.
In National Sign Company v. Douglas County Commissioners, 126 K. 81, (1928), the court stated that the Revised Statutes of 1923, Sec. 19-212, gives the board the power to "lay out, alter or discontinue any road running through one or more townships in such county, and also to perform such other duties respecting roads as may be provided by law. The Revised Statutes of 1923, Sec. 68-115, makes it the duty of each and every county engineer, as agent of the board, to remove or cause to be removed all obstructions that may be found in the city and county highways, and the board through its engineer may even enter upon private lands, carry away sand, gravel, and so forth. Although not specifically expressed, the board has the right to remove any and all obstructions from the public highway.

In Lewis v. Bourbon County Commissioners, 12 K. 149, (1873), the court stated that the statute does not make the commissioners the canvassing officers, nor designate the times and places of making the canvass of votes cast at an election held on the question of subscribing stock in a railway corporation.

In Vernon v. Edwards County Commissioners, 132 K. 119, (1931), the court ruled that under provisions of the Revised Statutes of 1923, Sec. 19-718 and Sec. 19-719,
authorizing the district court or the judge thereof to appoint attorneys to assist the county attorney in the prosecution of criminal cases is a matter left within the discretion and judgment of the court or judge and not with the board. When such an appointment is made and it has been shown that services were rendered by the attorney under the appointment, it is incumbent on the board to allow and pay to the assisting attorneys reasonable compensation for their services.

In the case of School District v. Ellis County Commissioners, 138 K. 274, (1933), the court stated that when a derelict county treasurer embezzled a large amount of the public funds which came into his hands by virtue of his office, and when his personal estate was insolvent and his official bond worthless, the resultant loss of public funds must fall on the county at large. In absence of statutory provision in this event, the court ruled that the board is without expressed or implied authority to direct that the loss shall be prorated among the subordinate taxing districts of the county.

In Sinclair v. Eddy, 87 K. 45, (1912), the court ruled that when a board adopts a resolution providing that if within a fixed period the Supreme Court shall decide certain taxes to be illegal, all payments of similar taxes shall be refunded, the statute of limitations upon claims
for the recovery of such payments is not thereby suspended, after the period named has elapsed without such decision having been rendered.

This chapter contains a brief summary of the points of law discussed in the various cases as they pertain to the statute. The court has ruled:

The commissions shall be elected from districts and not from the entire county. The D javascript: HTMLEntityUtil.decodeAt(380, 94, 429, 102)ecision in a case of an agent's injunctive of the commission shall be recorded in the office of the county clerk, and may be issued for five years.

After such election, the board would be organized before any business can be transacted. The chairman holds the office from the day of his election until the second Monday of January next after the election of the office of the board. The board at its organization meeting may transact business.

The county board and the commissioners without notice to the other county may appoint a person to fill a vacancy in the office of commissioners. The next general election is the one that follows the vacancy, and any one following the end of the term that the county sheriff's committee has no power to nominate a candidate for the position of commissioner in the county at a primary in the primary.
CHAPTER IV

SUMMARY

This chapter contains a brief summary of the points of law discussed in the various cases as they pertain to the statutes. The court has ruled:

The commissioners shall be elected from districts and not from the entire county. The legislature is without power to fix terms of different lengths for the commissioners of the various counties. Commissioners hold their office for two years.

After each election, the board must again be organized before any business can be transacted. The chairman holds his office from the day of his election until the second Monday of January next after his election to that office. The board at its organization meeting may transact business.

The county clerk and one commissioner without notice to the other commissioner cannot appoint a person to fill a vacancy in the office of commissioner. The next general election is the one that follows the vacancy, not the one following the end of the term. Also, the county central committee has no power to nominate a candidate for the position of commissioner in the absence of a candidate in the primary.
The coroner as a county officer cannot hold the office of commissioner and resignation from a county office takes effect on acceptance by the governor and not on mailing the resignation. A city clerk may not hold the office of commissioner and the resignation of such position must also include the leaving of such position. A person must be "eligible to hold the office" under the law, not "eligible to be elected". Incompatibility of holding two offices arises when the nature of the duties of the two offices are such to render it improper.

The board, before it can act, must be convened in a legal session. Special sessions may be called by the chairman upon the request of two members, but personal notice must be served upon every member of the board. The acts of a commissioner, whether de jure or de facto, are binding on all the people of the county and his authority can be questioned only by the state. The board cannot act except at a meeting regularly held. Persons dealing with officers of a municipal corporation must ascertain the nature and extent of their authority.

The office of a member of the board is not vacated by a change in the boundaries of the districts until the end of his elected term. The equality in population and compactness of a district is discretionary with the board. The word "compact" means closely united. Redistricting
should not exclude a successful nominee by placing him outside the district. The board may alter township lines at any time without a petition or notice of the change. The commissioners must redistrict the county. The county attorney is authorized to bring suit to force this duty and the commissioners may not evade it on the grounds that they have discretion to act. Redistricting should be done on the basis of the last official census.

The board has the power to make reasonable rules and regulations for the government of its proceedings. A board may adjourn to meet at another time and at that meeting it may reconsider and set aside former orders of the adjourned session. The board in addition to their $100.00 compensation for attending regular and special sessions, may also receive further compensation for services rendered in equalizing assessments and in levying taxes, and as a canvassing board. Their claims for services other than attendance of meetings must be specifically itemized to receive their pay.

The records of the board are the best evidence of acts, as opposed to oral testimony of a member of the board. In the absence of such a record, an otherwise valid claim is not defeated, if evidence may be produced in another form. Ordinarily, the board records furnish the best evidence of the acts and proceedings of such officer.
A person cannot maintain an action against the board when the relief sought affects merely the interests of the public in general and not those of the individual. Further, a private person cannot maintain an action to question the official composition of that board. The official title of the county as a litigant is "the board of county commissioners", but any apt designation would serve the same purpose. Appeals from the board to the district court must be limited to such cases as require the exercise of purely judicial powers. If private rights would be injured or endangered, then a judicial question is involved. In passing upon claims against the county, the board does not exercise a strictly judicial function, the appeal then is only a method of taking the controversy to court. An appeal will not lie from the decision of a board upon a purely discretionary matter.

Questions involving the proceedings of a board which do not injure an individual can only be prosecuted by the state.

A county is liable for the negligent or wrongful acts of its board only if such liability is expressly imposed by statute or necessarily implied therefrom. Failure to discharge a statutory duty by a commissioner renders the county officers subject to prosecution for a misdemeanor, but no civil liability is imposed. The board of one county
cannot be sued in another county. The board must levy a special tax each year until the judgment rendered on their liability is paid.

The board is the sole agent of the county with the power to contract for the county or to create an indebtedness against the county. The county is not liable for services or supplies contracted for by a township trustee without the consent of the board. Such power resides alone in the board. In certain circumstances of emergency and lack of suitable county facilities, the township trustee has the power to bind the county.

A contract entered into between two members of the board and an individual, outside of their county and without previous authority, and the contract not ratified by the board, is void. The board in contracting for the official newspaper cannot continue the contract for a period longer than one year so as to bind or tie the hands of their successors in office. The board has exclusive control over the county printing, and in the absence of fraud or collusion, injunction will not lie to restrain the board from paying for such printing at legal rates, even though other parties may be willing and do offer to do the printing for a lower sum. In contracting for a county depository of funds, the board may not contract for a period of time that will tie
the hands of succeeding boards. The board shall not contract for any item of annual expenditure, that is within the discretion of each succeeding board, for a period longer than one year. Provisions pertaining to road building must be construed to confer upon the board the authority to enter into contracts extending beyond their term of office, to permit a comprehensive program of road building. A board may refuse to proceed with a contract and answer in damages for benefits received from the partial fulfillment of the contract, if the contract was entered into by a mistaken view of a pure question of law. No claim should be allowed unless made out in separate items and the nature of each item stated with the time actually devoted to the performance of the service specified. No claim for additional service to prisoners may be charged by a sheriff above the statutory amount. Claims of a county attorney for allowances in criminal cases made by the district judge, must be presented and audited by the board. When a claim for money is properly presented to the board and they refuse to take action thereon or fail to allow the claim, the claimant may commence an original action against the county for the claim. A claimant may present another claim asking compensation for services apparently paid, if not covered in the first claim. Any claim paid in violation of law is
recoverable by the county. The board is virtually a board of arbitrators to which all parties having claims must submit such claims for examination, audit, and allowance. A claim against a county for having collected an illegal tax is an "account" which must be presented to the board for allowance or rejection. If illegal claims are allowed by the board and the allowances were made under honest mistake of the law as to the liability of the county, the board is not liable to charges of corruption.

When no account, claim or demand is filed or presented against the county it is unlawful for the board to issue county warrants, and the members may be punished as provided by law. The board cannot be compelled to issue warrants to pay claims from the general fund when it is exhausted. The board has no power to issue county warrants for the payment of current expenses in excess of the revenues to be derived from the general tax levy. A warrant is invalid if obtained from the board while not having the authority to make the allowance on which the warrant was issued or if fraud in obtaining the warrant from the board can be shown. The board cannot use warrants as a method of borrowing money to escape the law providing for the approval of the people, nor can they issue warrants in excess of the contract price, nor can the board delegate their authority, thus giving up their discretion of action.
Bonds of a county are ascertained claims. The board has no power to audit or allow them or to disallow them. The board has power, after the approval of the people, to issue bonds to meet the current expenses of the county when a deficit exists. The county may enter into an agreement to compromise the county indebtedness at a price agreed to and to issue new bonds to pay the amount agreed to in the compromise. The board may issue highway bonds from time to time as required as the preliminary work progresses. Submitting the question of issuing bonds to build permanent county buildings is necessary and it is not necessary to submit the question of the building of permanent county buildings in that case.

The discretionary power of the board in the levying of taxes does not provide for the accumulation of funds for the remote future. The board has no power to defray county funds raised by taxation to meet the expenses of the county for the current year, to build permanent county buildings. The taxing of the county is authorized to the county commissioners and to no other person. The commissioners sitting as a board of equalization may raise or lower the valuation of personal property, but they have no power to add to the personal property statement. The commissioners are not charged with the duty of seeing to it that all property is
assessed and placed upon the tax rolls and in the absence of express power pertaining to taxation, the board is held to limited powers. The board is the proper party to bring action to recover taxes. The entire subject of taxation is statutory.

The judgment of the board is conclusive as to the sufficiency of the buildings owned by the county. If the rooms are insufficient, the board may bind the county to provide such rooms. In a county without a courthouse, when the citizens donate a building to be used for that purpose and the board meets in said building, it shall be deemed sufficient acceptance of same. If the value of a building is less than $500.00, the board may order it razed without a unanimous vote. When the board enters into a contract for the erection of permanent county buildings which is void, and are carrying out the terms of the contract, they may be restrained by injunction from proceeding with the contract and also restrained from drawing any warrants on the county treasurer therefor. The board has no general discretionary power over a subject if definitely defined in the statutes; their only function is how best to comply with the law. A petition containing three-fifths of the names of the electors of the county must be presented to the board to be sufficient to authorize the board to order an election to
relocate the county seat. The board has no discretion but to obey the petition for the relocation of the county seat, if it is in compliance with statute. In a county seat relocation election, it is considered valid if the majority of the electors voting approve the relocation, even though not all of the legal electors voted. The board has no power in absence of any vote to move the county offices to a new addition of the place first designated as the county seat. When a board fixes the site for the county buildings, it has then exhausted all of its power.

The board is the general agent of the county and as such it has general management of the affairs of the county; however, there are many limitations upon this general control. One is that it cannot interfere with duties specifically assigned to a given officer. The board cannot remove the county treasurer from office and fill his place by appointment. The office becomes vacant only by the judgment of a court of competent jurisdiction. If the office becomes vacant, the board shall appoint a suitable person to perform the duties of the office until the vacancy is filled or the disability removed. The county clerk has no authority to levy taxes on the property of an individual. The power rests with the board and it alone, and it may not delegate this power. There is no need for the board to
confirm the appointment of the county auditor by the
district court. When the board neither authorizes or
contracts for clerk hire for a county office, they are
not required to acknowledge claims therefor. When the
commissioners sanction the sheriff's hiring of prison
guards, in compliance with law, an implied contract to
pay for their services is raised. The board is without
power to contract with individuals to perform duties im-
posed by law upon the regularly constituted officers.
Without an order from the board, a county officer cannot
charge for services voluntarily performed by him which are
not within the ordinary scope of his own official duties.
An official has no claim against a county for articles
purchased for his office without the sanction of the board.
It may be necessary for the county attorney to act contrary
to the wishes of the board, or even to sue the board. If
the board requests the county attorney to render services
outside of his duty, he is entitled to his fee. The board
may require an official to give additional bond or security
when it is deemed necessary. The bond cannot be demanded
except for some reasonable cause. Under a statute which
says "shall be allowed", it shall be interpreted to mean
"may be allowed", thus giving the board the power of dis-
cretion.
The board is a statutory organization which has no power except such as is granted in express terms, or is necessarily implied in or incident to the powers expressed. Although the board may threaten to over-step their powers, the presumption is that when they take final action, they will act in accordance with the law. The board has full freedom and power to hold their sessions wherever they see fit, provided they are held at the county seat. The board may exercise general oversight and supervision of the execution of contracts and receive compensation for this service if presented in proper manner. Corruption in office means the intentional disregard of law from improper motives. Commissioners are not called upon to justify themselves in their action; if corruption is accused, the burden of proof lies with the state. Any commissioner who shall neglect or refuse to perform any act which is his duty, shall forfeit his office and be removed.

The power conferred upon public officials to exercise judgment or discretion attaches only when jurisdiction has been acquired; it cannot be used to create jurisdiction. The county commissioners cannot convene as a board or exercise the powers conferred on the board outside the territorial limits of the county. The legislature cannot confer powers upon the board which are not wholly a matter of local
legislation, if the delegation of power to legislate provides lack of uniform operation throughout the state. The board may, for the protection of public funds, suspend the county treasurer and appoint another person as acting treasurer. It is unlawful for the chairman of the board to allow a claim in excess of the amount agreed to by vote of the board. Commissioners have no jurisdiction or control over the taking of the enumeration of the county, and have no authority to amend or to revise it. Mistakes of judgment should be excused if good faith can be presumed. It shall be considered willful misconduct in office to pay a higher price for equipment than is necessary, if such purchase is willfully and knowingly carried out with disregard for the officers public trust. When statute provides for the board to employ extra help, it is not the court's place to decide the wisdom of the board's judgment. If action is justified and in absence of statute to the contrary, it should receive a more liberal construction. When official powers and duties are conferred or imposed upon a public officer, the only implied powers possessed are those which are necessary for the effective exercise and discharge of said powers and duties. The means by which the board may discharge duties imposed on them are supplied by statute, although occasionally, there is a narrow field in which the doctrine of im-
plied powers must be permitted to operate. A misinterpre-
tation of law by the board could not and will not affect 
positive statutory provisions, requirements and results.
By implication of other statutes, the board has the right 
to remove any and all obstructions from the public high-
way. The appointment of attorneys to assist in the pro-
secution of criminal cases is a matter within the juris-
diction of the courts. It is binding on the board to allow 
and pay the assisting attorneys reasonable compensation.
When losses are incurred by county officers, the loss must 
fail on the county at large. The board is without author-
ity to direct that the loss shall be pro-rated among the 
subordinate taxing districts of the county. The board 
cannot set aside the statute of limitation by resolution.
BIBLIOGRAPHY

1. Government Publications


