



**FILE**

Subject

*City's Government*  
*City officials*

Copy to

*Miller*  
*Conflict of Interest*

STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

July 31, 1974

Opinion No. 74- 258

David S. Lord  
City Attorney  
108 West Washington  
Arkansas City, Kansas 67005

Dear Mr. Lord:

In opinion no. 74-182, we concluded that § 54 of 1974 House Bill 2054, now ch. 361, L. 1974, prescribed the salary of the Probate Judge of Cowley County to become effective next year. Section 54(b) commences thus:

"Such probate judge shall not practice law in any court of the county in which he resides."

You advise that you are presently city attorney for the City of Arkansas City, Kansas, and the only candidate who filed for the office of Probate Judge of Cowley County. You request our opinion whether the quoted portion of the section prohibits you from continuing as city attorney for the city, so long as the city employs separate counsel to act as prosecutor in all court actions, and retains other counsel to represent the city in any litigation.

The prohibition against the practice of law in any court of the county in which he resides does not extend further than its express terms, in our view. Thus, the judge is legally privileged to engage in the practice of law so long as he does not practice in any court of the county of his residence, and of course, so long as work for any given client or on any given matter does not conflict with the discharge of his judicial duties.

It might be helpful to remark on one other sentence in section 54 of the bill, which states thus:

"Said probate judge shall not receive any compensation or fees for his services pursuant to K.S.A.

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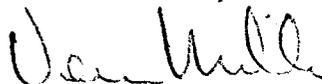
28-806 or K.S.A. 1973 Supp. 59-215 or 59-2922,  
or amendments thereto, or from any other source,  
except that he shall be entitled to retain fees  
received for performing marriage ceremonies."  
[Emphasis supplied.]

A literal reading of the underscored prohibition would prohibit the judge from receiving any compensation from any source whatsoever other than the salary of his office. Such a construction would require any person elected probate judge in counties subject to section 54 to divest themselves of all interests from which they received compensation, and to forego all activities of whatever kind for which compensation would otherwise be paid. We think the phrase "from any other source" must be construed in the context in which it appears, and thus to apply to compensation for services performed in his capacity as probate judge. K.S.A. 28-806 prescribes compensation to be paid to a probate judge for his services as county judge. K.S.A. 59-2922 describes procedures in the probate court concerning mentally ill persons. Compensation for services performed in the capacity as probate judge under these provisions is prohibited to probate judges subject to section 54. Thereunder, the judge is specifically permitted to retain fees for performing marriage ceremonies. The phrase "from any other source" refers, we think, to income from any other source for services of whatever kind performed in the capacity of probate judge, and does not prohibit the receipt of compensation as proposed here, for legal services performed for the City of Arkansas City.

Accordingly, it is our opinion that you may continue to serve as City Attorney for Arkansas City, under the circumstances described above and as set out in your letter.

If we can be of further assistance, please feel free to call upon us.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm