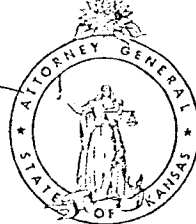


FILED

Subject

*Cities - Government  
City Officials  
Misc  
Confidential Interest*



STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

August 14, 1974

Opinion No. 74- 269

James R. Ward  
Assistant City Attorney  
City of Topeka  
Municipal Building  
215 East 7th Street  
Topeka, Kansas 66603

Dear Mr. Ward:

You inquire concerning the application of K.S.A. 75-4301 *et seq.*, to approval by the City Commission, and execution by the Mayor, of a contract between the City and Shawnee County Community Assistance and Action, Inc. (SCCAA), wherein the City as a recipient of a grant from ACTION will be providing funds to SCCAA to implement the grant. You advise that all members of the City Commission are directors of SCCAA, and one of the Commission members, Jack Alexander, City Water Commissioner, serves as President of SCCAA.

SCCAA, as you indicate, is a nonprofit Kansas corporation, and none of the city officials who set on the Board of Directors or act as officers of the corporation receive any remuneration for their services. SCCAA is a community action organization, organized as such to implement provisions of the Equal Opportunity Act of 1964, as amended, 42 U.S.C. §§ 2701 *et seq.* Section 2791 states in pertinent part thus:

"(a) Each community action agency which is a State or a political subdivision of a State, or a combination of political subdivisions, shall administer its program through a community action board which shall meet the requirements of subsection (b) of this section. Each community action agency which is a public or private nonprofit agency or organization designated by a State or political subdivision of a State, or combination of political subdivisions, or is an agency designated by the

James R. Ward  
August 14, 1974  
Page Two

Director under section 2790(d) of this title, shall have a governing board which shall meet the requirements of subsection (b) of this section."

"(b) Each board to which this subsection applies shall consist of not more than fifty-one members and shall be so constituted that (1) one-third of the members of the board are elected public officials, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirement . . . ."

K.S.A. 75-4304(a) states thus:

"No public officer or employee shall in his capacity as such officer or employee, make or participate in the making of a contract with any person or business by which he is employed or in whose business he has a substantial interest, and no such person or business shall enter into any contract where any public officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. . . ."

The term "substantial interest" is defined at K.S.A. 75-4301 to include

"the holding of the position of officer or director of any business, irrespective of the amount of compensation or remuneration received by the person holding any such position."

"Business" is defined to include "[a]ny corporation."

K.S.A. 75-4304, on its face, is designed to prohibit self-dealing, i.e., a contract or agreement whereby a public officer or employee, acting in that capacity, participates in the making of a contract with a business in which he has a substantial interest. Thus, a public officer or employee may not be a party to a contract in connection with which he enjoys a dual role, i.e., acting or participating therein in both his public and private capacities. In this instance, city officers do not sit on the board of directors or act as officers of the corporation in any capacity distinguishable from their positions as city officers. Members of the city governing body are members of the corporation's board of directors

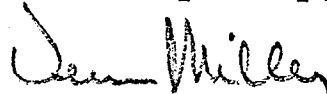
James R. Ward  
August 14, 1974  
Page Three

precisely because federal law requires that they be so, in order that the corporation may qualify for administration of the program of the City under the Economic Opportunity Act of 1964, as amended. In their capacity as directors, they represent the City, and their service on the board continues only so long as they continue to be officers of the City. SCCAA has presumably been designated by the City as a community action agency under 42 U.S.C. § 2790, and as the designee so selected, it acts for and on behalf of the City in the administration of its community action program, pursuant to an agreement with the City.

In this instance, city officials do not sit on the SCCAA board of directors in any private capacity, but are members precisely because of their public position, and as representatives of the City. The corporation serves, in an important sense if not in terms of strict legal accountability, as an instrumentality of the City, organized specifically and solely to qualify for administration of community action programs, the funds therefor which derive from federal grants under the 1964 Act.

Members of the city governing body who set on the SCCAA board of directors pursuant to provisions of the Economic Opportunity Act of 1964 in order that the corporation may qualify thereunder as a community action agency designated by the City do not, in our opinion, violate the provisions of K.S.A. 75-4304 in approving and executing a contract between the City of Topeka and the corporation for implementation of a community action program, when their membership on the board of directors is based solely upon 42 U.S.C. § 2791, to enable the corporation to qualify thereunder as a community action agency.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm