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STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

August 26, 1974

Opinion No. 74- 290

Richard C. "Pete" Loux
House Minority Leader
House of Representatives
Capitol Building
Topeka, Kansas 66612

Dear Representative Loux:

You inquire whether, as a member of the Kansas Legislature, you may lawfully conduct a seminar under the auspices of the University of Kansas, in the Capitol Complex Management Program, and receive compensation therefor.

The initial question is presented whether there exists some incompatibility between your legislative position and the duties relating to the seminar. In *Dyche v. Davis*, 92 Kan. 971, 142 Pac. 264 (1914), the court stated thus:

"In the absence of constitutional or statutory restrictions, the incumbent of two offices which he may rightfully hold is entitled to the compensation provided by law for each. [Citations omitted.]

"This principle is not disputed, but the auditor distinguishes this case by the fact that a professor in the University is not a public officer. While that is true, his compensation is fixed by public authority and is made payable out of public funds, and the principle is applicable. [Citation omitted.]

"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other. This is something more than a physical impossibility to

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discharge the duties of both offices at the same time. It is an inconsistency in the functions of the two offices. * * *

"No incompatibility is discovered between the duties of fish and game warden and professor of systematic zoology and taxidermy and curator of birds, mammals and fishes. Indeed, Professor Dyche's long study, research and experience in the subjects included in his professorship were considered by the chancellor and regents of the University and the governor as fitting him especially for the highly important duties of fish and game warden. . . . Instead of being inconsistent or incompatible, duties performed and experience gained in one station would enable the incumbent the more intelligently and effectually to do the duties of the other. . . .

"It is concluded that there is no rule of public policy that will prevent the state from receiving the plaintiff's services as fish and game warden, and also as a professor in the University, and paying his compensation from the direct appropriation made for his salary as warden, and from the amount provided by the board of administration for his salary as professor." 92 Kan. at 978-979.

We have quoted at length from this case because the question is squarely responsive to the question raised. We conceive no inconsistency or incompatibility between your duties and responsibilities as a member of the Legislature, and your direction of a seminar conducted under the auspices of the University of Kansas in an area within your professional or legislative responsibilities or expertise.

K.S.A. 46-132 states in pertinent part thus:

"Neither shall any member of the legislature, within one (1) year after the expiration of his term, be interested in, either directly or indirectly, any contract with the state, which contract is authorized by any law enacted during the term for which he shall have been elected."

So long as no law has been enacted during your tenure as a member of the Legislature authorizing the seminars in question, you are free to contract to conduct or direct seminars in the program. An act appropriating money is not, in and of itself, a law authorizing a contract; rather, it merely provides funds

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for the execution of a contract the substantive authority for which is found elsewhere. Thus, you are not prohibited from engaging in the program by the fact that you have voted on appropriation bills for the University of Kansas.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm