

FILE

Subject

*H. R. Rensmeyer
Employee - Multi*

Copy to

*Office of the Attorney General
Miss. G. G. G. G.*



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

October 24, 1974

Opinion No. 74- 349

Mr. James R. Cobler, Director
Accounts and Reports Division
Second Floor, Capitol
Topeka, Kansas 66612

Dear Mr. Cobler:

The question has been raised whether K.S.A. 46-132 prohibits the appointment of Mr. E. A. Rensmeyer, who was elected in 1972 to be state representative from the 30th representative district, to the position of central accountant III or IV.

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

"No person elected to the legislature shall receive any civil appointment to a state office during the term for which he had been elected, and all such appointments shall be elected...."

Mr. Rensmeyer has recently resigned from his seat, although the term for which he was elected, of course, extends until January, 1975. The precise question which is raised is whether the position of central accountant III is a "state office" within the meaning of this provision.

The statute prohibits appointment of a member of the legislature to a "state office" during the term for which he was elected. It does not prohibit a member from accepting a position of employment with the State, however. The distinction between an office and a position of employment is recognized by the Kansas Supreme Court. In *Miller v. Ottawa County Commissioners*, 146 Kan. 481, 71 P.2d 875 (1937), the court stated thus:

"The distinction between an officer and an employee is that the responsibility for results is upon one and not upon the other. There is also upon an officer the power of direction, supervision and control. The

James R. Cobler
October 24, 1974
page two

distinction between a public officer and an employee is concisely made in 22 R.C.L. 379, in the following language:

' A public office is not the same thing as a contract, and one contracting with the government is in no just and proper sense an officer of the government. The converse is likewise true and an appointment or election to a public office does not establish a contract relation between the person appointed or elected and the public.'

The court quoted with approval from 46 C.J. 927 thus:

"It is important to distinguish an office from an employment, also, because in many respects the rules of law governing the relation of employee and employer do not govern the official relation, which is regulated by that part of the law which may be spoken of as the law of officers."

In *State v. Ottawa*, 84 Kan. 100, 113 Pac. 391 (1911), concerning the application of the eight-hour law to laborers, workmen and others employed by a city, it was stated thus:

"Officers are excluded by the use of the term 'employed,' an office being distinguished from an employment in that it implies tenure, duration, emolument and duty...."

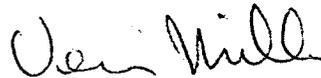
See also *Jagger v. Green*, 90 Kan. 153, 133 Pac. 174 (1913).

In short, an officer, by virtue of his position, exercises some portion of the power of the state. An employee is generally one whose work is subject to direction and supervision of the appointing power, and who does not, by virtue of his position of employment, exercise and wield any independent power delegated to him by the State, apart from the direction and supervision of those responsible for his direction and supervision.

James R. Cobler
October 24, 1974
page three

The position in question here is, in our judgment, one of employment. The position is filled through competitive civil service procedures. In entering into the position, Mr. Rensmeyer enters into a contract of employment with the state. We have reviewed the job description for the position. The position of central accountant is clearly one of employment, and not an office, and accordingly, K.S.A. 46-132 has no application.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:tp

cc: Franklin Theis
Lowell Long
Lynn Hellebust
Harold Gibbon
E. A. Rensmeyer