

Subject

Courts
County Court
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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

November 7, 1974

Opinion No. 74- 354

Mr. Lowell F. Hahn
Phillips County Attorney
Phillipsburg, Kansas 67661

Dear Mr. Hahn:

You advise that the question has been raised by the county judge of Phillips County whether she may lawfully appoint the deputy of another elected county official, as for example, of the Register of Deeds or County Treasurer, to act as judge pro tem in her absence.

K.S.A. 1973 Supp. 20-818 provides thus:

"When the county judge shall be disqualified from acting in any cause or matter before him or is temporarily absent from the county, or shall be temporarily disqualified from acting in any cause or matter before him because of sickness, the parties in any action or proceeding pending and ready to be heard may select some competent and disinterested person to act as judge pro tem of said court, or said county judge may himself select some competent and disinterested person to act as such judge pro tem during such absence or disqualification: *Provided*, A county court judge pro tem may be appointed under the provisions of section 2 [20-821] of this act."

K.S.A. 20-821, which permits appointment of a judge pro tem for the county court, specifies only that the person so appointed shall be a "suitable person."

A deputy of an elected county officer may very well be a "competent and disinterested person" eligible to appointment under K.S.A. 20-818, and a "suitable person" under K.S.A. 20-821.

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The only objection which foreseeably might be raised against such an appointment may be on the ground that the position of judge pro tem and of deputy to a county officer are somehow incompatible. The traditional description of this doctrine is set out at *Hyche v. Davis*, 92 Kan. 971, 142 P. 264 (1914) thus:

"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 discharge the duties of both offices at the same time. It is an inconsistency in the functions of the two offices." 92 Kan. at 977.

We perceive no inherent incompatibility between the position of, e.g., deputy county register of deeds, and county judge pro tem, and it is our opinion that such an officer is eligible to appointment as a judge pro tem, except, of course, as a conflict of interest might arise in a particular case.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:tp