



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 11, 1975

Opinion No. 75- 48

Mr. Edward J. Chapman, Jr.
Urban Renewal Board
402 Shawnee Street
Leavenworth, Kansas 66048

Dear Mr. Chapman:

As counsel for the Urban Renewal Board of Leavenworth, Kansas, you advise that one of the board members has filed for election to the board of education of Unified School District, No. 453, this being the board of education governing all schools within the city limits of Leavenworth. You inquire whether it is legally permissible for this board member, while serving in that capacity, to be a candidate for a position on the board of education of said district, and if elected, to serve on the board of education while, at the same time, continuing to serve as a member of the Urban Renewal Board of Leavenworth.

K.S.A. 17-4758 provides that no urban renewal board member, as well as certain other public officers and employees

"shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality or in any contract or proposed contract in connection with such urban renewal project."

By becoming a member of the board of education, the member in question does not acquire any such interest by operation of law

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as a result of his membership of such board of education. This section continues thus:

"No commissioner or other officer of any urban renewal agency, board or commission exercising powers pursuant to this act shall hold any other public office under the municipality other than his commissionership or office with respect to such urban renewal agency, board or commission." [Emphasis supplied.]

A seat on the board of education is not, in our view, a public office "under the municipality." The board of education is a separate quasi-municipal corporation, and an officer thereof is not by virtue of that position an officer of the municipal corporation in which such board sits and operates schools located therein.

Lastly, we conceive no inherent incompatibility between the two offices. "[T]he common law does not prevent one person from holding two offices, provided that the duties of neither one are incompatible with the duties of the other." Dyche v. Davis, 92 Kan. 971 at 976977 (1914). The court continued thus in that opinion:

"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."

As indicated, there appears to be no inherent inconsistency or incompatibility between the duties of a member of the board of education and those of a member of the board of the urban renewal agency. Accordingly, in our opinion there is no legal objection

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based upon any of the foregoing provisions to the present board member from being elected to, and serving upon, the board of education of U.S.D. 453.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj