



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

February 11, 1975

Opinion No. 75-50

The Honorable Marian K. Reynolds
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

*Withdrawn
see AG- or
82-216*

Dear Representative Reynolds:

You inquire whether a member of the city council of a city of the third class may also serve as a township officer. In an opinion dated March 26, 1951, Attorney General Harold R. Fatzer stated thus:

"It is our view that these two offices would be incompatible and that it would not be proper for one person to serve in both capacities. It can readily be seen that the performance of the duties of one of the offices might readily interfere with the performance of the duties of the other. This the Supreme Court defines as incompatible offices and prohibits the same person from holding both."

In Dyche v. Davis, 92 Kan. 971 (1914), the court stated 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."

The Honorable Marian K. Reynolds
Page Two
February 11, 1975

A city of the third class is located within the corporate limits of the township. K.S.A. 15-104 states thus:

"Cities regulated and governed by this act [i.e., cities of the third class] shall be and remain a part of the corporate limits of the townships in which the same are situated."

Each, the city and the township, thus govern, to some small extent, the same territory, for the corporate limits of the city are included within the corporate limits of the township. The governing body of each, the city and the township, have differing functions and responsibilities; these responsibilities and duties do not conflict with each other, but rather, are complementary. The city governing body has charge of the affairs of the city, care of city property, and responsibility for enforcement of the ordinances of the city. The duties of the township board are likewise prescribed by law. None of those duties are such as to interfere with the performance of the duties of the city governing body. A township officer has no duties, by virtue of that office, which in our view may be deemed legally incompatible with the duties of a member of the council of a city of the third class. In our opinion, the two offices are not incompatible, and may be held by the same person.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj