



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 7, 1975

Opinion No. 75- 52

The Honorable Richard D. Rogers
President of the Kansas Senate
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Senator Rogers:

You inquire whether a teacher under contract to Unified School District No. 383 may run for office as a member of the board of education of that district, and serve if elected.

In Dyche v. Davis, 92 Kan. 971 (1914), the court pointed out that "the 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." Concerning incompatibility, 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."
92 Kan. at 977.

In that case, the question was posed whether the plaintiff, a professor on the faculty of the University of Kansas, was entitled to receive, in addition to his salary for his professional services, salary for services as a state fish and game warden. The auditor

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pointed out that the doctrine of incompatibility of offices was not technically applicable, because a "professor in the University is not a public officer," but an employee of the state. The court acknowledged that

"[w]hile that is true, his compensation is fixed by public authority and is made payable out of public funds, and the principle is applicable."

Thus, in the circumstance you pose, the individual in question in the position of a teacher is not an officer of the school district, but an employee thereof, while in the capacity as a member of the board of education of the district, the individual would be an officer. Notwithstanding, the court made clear in Dyche that the same doctrine is applicable as to positions of dual office-holding.

In State ex rel. Clawson v. Thompson, 20 N.J.L. 689 (Sup. Ct. 1846), the court stated a general criterion of incompatibility which is universally accepted:

"Offices are incompatible when one has power of removal over the other, when one is in any way subordinate to the other, when one has power of supervision over the other, or when the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both."

See also Clifford v. School Committee of Lynn, 275 Mass. 258, 175 N.E. 634 (Mass. 1931).

Clearly, applying the standards set forth above in Clawson, the positions of board member and teacher employed by the same district are incompatible. It needs little discussion to demonstrate the pertinence of those criteria to the holding of the two positions.

Thus, on the basis that the two positions are demonstrably incompatible, we cannot but conclude that a person holding office

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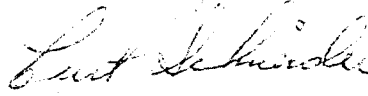
and serving in the capacity of a member of the board of education of a unified school district may not receive compensation from that same district as an employee thereof in the position of a teacher.

We should point out that the statutory general conflict of interest law, K.S.A. 75-4304(a), does not disqualify the individual from being a candidate and accepting the office if elected. It provides thus:

"No public officer or employee shall in his capacity as such officer or employee, make or participate in the making of a contract with any person or business by which he is employed or in whose business he has a substantial interest, and no such person or business shall enter into any contract where any public officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. A public officer or employee does not make or participate in the making of a contract if he abstains from any action in regard to the contract." [Emphasis supplied.]

Although the individual in question is not ineligible by virtue of his position as a teacher-employee of the district from seeking election as a member of the board thereof, he is disqualified, in our judgment, from receiving compensation from the district for his services as a teacher should be elected to and accept the office of a member of the board of education thereof.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

STATE OF KANSAS



GOVERNMENTAL ETHICS COMMISSION

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Opinion No. 74-59

November 13, 1974

Mr. Ron Svaty
Ellsworth County Attorney
Box 83
Ellsworth, Kansas 67439

Dear Mr. Svaty:

This opinion is issued by the Governmental Ethics Commission in response to your letter of October 30, 1974 to Attorney General Vern Miller. Your letter was referred to this Commission insofar as it relates to K.S.A. 75-4301 et seq. which is within the Commission's jurisdiction.

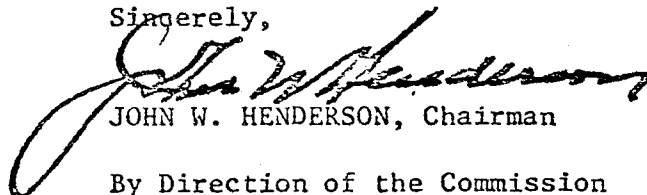
We understand that you are the Ellsworth County Attorney. In your capacity as such, you ask whether there is any violation of any state statute in the situation where a school board member is also employed as a teacher in a vocational school administered by the school board of which he is a member.

We note at the outset that the Commission has jurisdiction to render opinions which relate to this specific question only in regard to K.S.A. 75-4301 et seq. Thus, whether some other common law or statutory system may prohibit the holding of the dual positions you have described or restrict the behavior of one holding such dual positions is not covered by this opinion.

K.S.A. 75-4301 et seq. does not prohibit the holding of the two positions at the same time that you have described. Rather, the Act is aimed at restricting the behavior of those who hold such dual positions. Specifically, under appropriate circumstances, K.S.A. 75-4302 and 75-4305 require the filing of disclosure statements of substantial interests. In addition, K.S.A. 75-4304 prohibits participating in the making or making certain contracts under specific situations. If after review of these restrictions you have a question concerning their interpretation, feel free to contact the Commission for a further opinion.

In closing, we again note that this opinion is strictly limited to the applicability of K.S.A. 75-4301 et seq. to your question.

Sincerely,


JOHN W. HENDERSON, Chairman

By Direction of the Commission

JWH:jj
c: Donna Heller
Attorney General's Office