



STATE OF KANSAS

Office of the Attorney General

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

CURT T. SCHNEIDER
Attorney General

March 26, 1975

Opinion No. 75- 134

The Honorable Jim Lawing
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Representative Lawing:

You advise that one John Frye, executive director of Starkey Developmental Center for the Retarded, Inc., is a candidate for election to the board of education of Unified School District No. 259. K.S.A. 1974 Supp. 72-933 provides in pertinent part thus:

"The board of education of every school district shall establish approvable special education services for all developmentally disabled children"

You advise that Starkey Developmental Center for Retarded, Inc., has contracted with U.S.D. No. 259 to provide certain special education services to the board. You question whether, because of Mr. Frye's affiliation with Starkey and its position as a contractor with the board, Mr. Frye would be eligible, if elected, to participate in decisions of the board regarding special education services to be provided in the district.

K.S.A. 1974 Supp. 75-4304(a) states in pertinent part 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

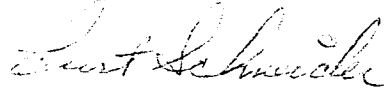
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is employed by or has a substantial interest in such person or business. A public officer or employee does not make or participate in the making of a contract if he abstains from any action in regard to the contract."
[Emphasis supplied.]

It is our view that if elected, Mr. Frye would be eligible to participate in board decisions regarding special education programs of the district generally, but would be ineligible to participate in board action appertaining to the making of any contract with Starkey. Purely by way of illustration, it is our view that if elected, Mr. Frye would be free to participate in a decision by the board, e.g., to offer special education services to blind children. He would be ineligible, however, to participate in board action approving specifications or requirements for a contract preparatory to the execution of a contract to provide those particular services, to which Starkey, Inc. became a party.

It is difficult to elaborate at greater length in any helpful fashion when dealing only with hypothetical questions. The fact that Mr. Frye was employed by a vendor of special education services would not disqualify him categorically from any action by the board concerning such programs. He would be ineligible, however, to participate in any board action which, implementing board policy already established, leads to the execution of a contract between the board and his employer.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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