



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
Attorney General

July 8, 1975

ATTORNEY GENERAL OPINION NO. 75- 281

Mr. Merle R. Bolton  
Commissioner of Education  
Kansas State Department of Education  
120 East 10th Street  
Topeka, Kansas 66612

Re: Conflict of Interest--Schools--Leasing of Real Property

Synopsis: A school superintendent is not prohibited by K.S.A. 1974 Supp. 75-4304 from leasing real property which he owns to the board of education for school purposes.

Dear Commissioner Bolton:

You advise that a superintendent of schools and a private citizen are jointly considering the purchase of a building, and leasing it to the board of education of the same unified school district by which the superintendent is employed. The costs of the lease will be paid for by the unified district, but will be reimbursed by the federal government under a special project for vocational education. Because the contract is expected to be for one year only, the board of education does not wish to purchase the building, for it will not need the building if the grant is not renewed. As stated above, the superintendent and a private citizen are together considering purchasing the building, and leasing it to the board of education for one year.

You question whether this undertaking would violate any Kansas statutes, and particularly the general conflict of interest law, K.S.A. 1974 Supp. 75-4301 et seq.

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

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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."

The superintendent is, of course, a public employee. He may not in that capacity enter into any contract with any "person or business" by which he is employed or in whose business he has a substantial interest. The term "person" refers, in our opinion, to a natural person. The term "business" is defined by K.S.A. 1974 Supp. 75-4301 thus:

"Any corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income,"

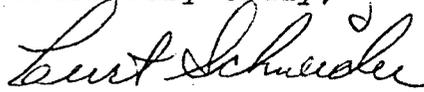
Neither the board of education and the school district constitutes a "business" as defined by the act. Thus, he is not prohibited, by virtue of his position as a public employee of the district, from entering into a contract with the district for the lease of real property to the district, for it is neither a "person" nor a "business" with which in his capacity of school superintendent he is forbidden to contract.

Based upon the facts related above, we find no provision under the Kansas general conflict of interest act, K.S.A. 1974 Supp. 75-4301 et seq. which prohibits the proposed transaction. Nor do we find any other provision of law which, either by letter or spirit thereof, bars the superintendent from the undertaking as described. The essential thrust of K.S.A. 1974 Supp. 75-4304 is to prohibit a public officer or employee from entering into a contract in which that officer or employee acts in his official capacity, on the one hand, and has a business interest, either by employment or otherwise, in the other contracting party. In the lease proposal discussed above, the superintendent in his official capacity has no voice in the decision of the board of education to enter into the lease, and as owner of the building, the superintendent acts only in his private capacity

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as a property owner, and in no wise does he act in his capacity as school superintendent as a party to the lease. Thus, we find no violation whatever in the proposed transaction.

Yours very truly,

A handwritten signature in cursive script, reading "Curt T. Schneider". The signature is written in dark ink and is positioned directly below the typed name.

CURT T. SCHNEIDER  
Attorney General

CTS/JRM/ksn