



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 15, 1975

ATTORNEY GENERAL OPINION NO. 75- 289

Senator James L. Francisco
604 North 1st Street
Mulvane, Kansas 67110

Re: State Departments--Public Officers and Employees
Conflict of Interests

Synopsis: Nothing in this section of the Kansas general conflict of interest act prohibits an individual who is elected to and serving upon a board of education of a unified school district and who is also a practicing psychologist from accepting professional referrals to his private practice by local school authorities.

* * *

Dear Senator Francisco:

Your recent letter inquires if a "conflict of interest" arises by virtue of the fact that certain pupils of a school district are referred by school authorities to a school board member, who is also a practicing professional psychologist, for professional evaluation and treatment. Relying on current Kansas statutes, it is our view that no such conflict comes into being.

The question should be determined by the provisions of K.S.A. 1974 Supp. 75-4301 et seq. K.S.A. 1974 Supp. 75-4304(a) provides in part:

"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 who business he has a substantial interest, and no such person or business shall enter into any contract where any public

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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 term "substantial interest" is defined in pertinent part in K.S.A. 1974 Supp. 75-4301 as:

"'Substantial interest.' The ownership by an individual or his spouse, either individually or collectively of a legal or equitable interest exceeding five thousand dollars (\$5,000) or five percent (5%) of any business, whichever, is less, and also including the receipt by an individual or his spouse directly or indirectly of any salary, gratuity, other compensation or remuneration having a dollar value of one thousand dollars (\$1,000) or more in the current or immediately preceding or succeeding calendar year from any business or combination or businesses,"

The term "business" is defined to include any

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

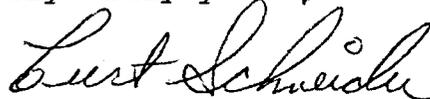
Given the penal consequences which may attach to any violations of this act, this statute must be construed narrowly under the traditional rules of statutory interpretation. As such, nothing in this section of the Kansas general conflict of interest act prohibits an individual who is elected to and serving upon a board of education of a unified school district and who is also a practicing psychologist from accepting professional referrals to his private practice by local school authorities. The reasoning for this conclusion is simple. First, there are no facts which indicate that the school district has contracted with the psychologist-school board member to handle all professional evaluation and treatment of pupils. Students and parents remain free to seek these same services elsewhere. Secondly, there has been no action taken by the school board in which this particular member participated whereby a contract was

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made "with any person or business by which he [the school board member] is employed or in whose business he has a substantial interest." In fact, the principal requisite for a conflict of interest to exist, action while in official capacity, is totally absent. Furthermore, no contractual relationship exists with any person or business by which he is employed or in whose business he has a substantial interest. There is lacking that legal and economical relationship between the school board member and the school district which must be present in this case to invoke the prohibition of the Kansas general conflict of interest act, K.S.A. 1974 Supp. 75-4301, et seq.

Thus, in response to your specific question, it is the opinion of this office that no violations of K.S.A. 1974 Supp. 75-4301 et seq. occurs when a psychologist who is a member of the local school board accepts referrals by local school officials to his private professional practice.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/HTW/bv