

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 20, 1975

ATTORNEY GENERAL OPINION NO. 75- 436

Mr. Donald E. Martin
City Attorney
Legal Department of Kansas City, Kansas
Ninth Floor - Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: Cities--Disqualification of Officers--Cities of the
First Class

Synopsis: Under K.S.A. 13-2903, relatives by blood or marriage
of the mayor or any commissioner are disqualified from
holding any city office, but are not disqualified from
holding positions of city employment.

* * *

Dear Mr. Martin:

K.S.A. 13-2903 states thus:

"The relatives by blood or marriage
of the mayor or any commissioner are hereby
disqualified from holding any *city office*
during the term for which said mayor or
commissioners are elected." [Emphasis
supplied.]

The question is raised concerning the extent to which this
disqualification operates. In my opinion, the statute operates
to disqualify only those persons who are relatives by blood
or marriage of the mayor or any commissioner from holding
any "city office." Any such person is not disqualified from

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holding a position of employment with the city, so long as it is not an office.

K.S.A. 1974 Supp. 12-3101 commences thus:

"The board of commissioners may appoint, by a majority vote of all the members thereof, the following officers, to wit: A city attorney, a city clerk, a city treasurer, a city auditor, a city engineer, a superintendent of streets, a superintendent of waterworks, a fire marshal, a chief of police, a city physician, a municipal judge of the municipal court, a superintendent of public parks, and such assistants and other officers and servants as they may deem necessary for the best interests of the city. . . ."

In *Jagger v. Green*, 90 Kan. 153 (1913), the question was raised whether a field man of the Kansas City, Kansas, department of health, was entitled to job protection under the civil service law then applicable to cities of the first class adopting a commission form of government. The court held that the person in question was not an officer, but an employee of the city. The court stated thus:

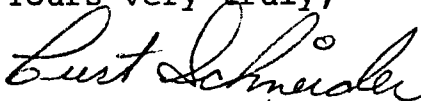
"The health commissioner is the only person connected with the department of public health who holds a position analogous to an office. The field men are merely subordinate employees who work under his direction and supervision and for whose conduct he is responsible. The power to condemn and confiscate unwholesome food stuffs is exercisable only under the commissioner's supervision and under such rules and regulations as he may formulate, and the field men possess no other authority which rises to the dignity of corporate power officially vested. It is not important that the ordinance uses the term 'officers' in one place in speaking of the appointees in the health department. *Considering the nature of the service, its relative importance, its essentially subservient character, and the placing of responsibility for results upon a*

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superior who is given full power of direction, supervision and control, it must be held that the plaintiff was not a city officer within the meaning of the statute just referred to." [Emphasis supplied.]

The distinction between a position of employment and an office is one which is well established in decisions of the Kansas Supreme Court. Clearly, in this instance, the disqualification of K.S.A. 13-2903 extends only to city officers, and not to city employees.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj