

STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

December 3, 1975

ATTORNEY GENERAL OPINION NO. 75- 446

Mr. Gary F. Conklin
Attorney at Law
Westmoreland, Kansas 66549

Re: Cities--Offices--Incompatibility

Synopsis: The offices of city treasurer and city clerk of cities of the third class are incompatible as a matter of law, and the person holding one such office may not at the same time hold the other of such offices.

* * *

Dear Mr. Conklin:

You inquire whether one person may serve as both city clerk and city treasurer of a city of the third class. Under K.S.A. 1974 Supp. 15-204, both offices are appointive, and the duties of each are prescribed largely by city ordinance.

In *Dyche v. Davis*, 92 Kan. 971 (1914), the court stated the general rule regarding incompatibility of office 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.

Mr. Gary F. Conklin
Page Two
December 3, 1975

When an office is designed to operate as a check upon another, the holding of two offices by a single person is generally forbidden, the duties of one being fundamentally incompatible with the other. Such is the case in the instance of the city clerk and city treasurer of a city of the third class. Under K.S.A. 1974 Supp. 10-801 *et seq.*, a part of the uniform procedure for the payment of claims and indebtedness applicable to all municipalities, both the clerk and treasurer have different but complementary duties. Under K.S.A. 1974 Supp. 10-803,

"Warrants and warrant checks shall be signed by the chairman, mayor, president, trustee, director or other chief official . . . and by the clerk, secretary or auditor or like officer"

The clerk must keep a record of all warrants and warrant checks issued, showing the number, date and amount thereof, on what fund drawn, and the name of the person or party to whom it is made payable. The treasurer must also sign any warrant or warrant check, under K.S.A. 1974 Supp. 10-805:

"Before delivering any warrant or warrant check to the payee the officer drawing the same shall present the same to the treasurer, who shall enter in a book by him kept for that purpose, the number, date and amount of such warrant, or warrant check, on what fund drawn, and the name of the payee, and thereupon sign the warrant or warrant check on the face thereof."

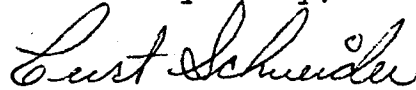
Similarly, under K.S.A. 1974 Supp. 10-807, the city treasurer and city clerk have differing responsibilities regarding the registration and payment of no-fund warrants.

The protection designed to be afforded by the responsibilities of the city treasurer, for example, would be compromised if that office were held by the same person holding that of city clerk. Accordingly, I cannot but conclude that the two offices in

Mr. Gary F. Conklin
Page Three
December 3, 1975

respect of a city of the third class are incompatible, and
that one person may not hold both offices at the same time.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj