



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider.
Attorney General

April 12, 1976

ATTORNEY GENERAL OPINION NO. 76-126

Mr. Kenneth E. Holm
Urban Renewal Agency of Kansas
City, Kansas
465 New Brotherhood Building
Kansas City, Kansas 66101

Re: Cities--Urban Renewal--Conflict of Interest

Synopsis: K.S.A. 17-4758 prohibits an employee of the Board of Public Utilities of the City of Kansas City, Kansas, from acquiring any interest in property included in an Urban Renewal Project in said city.

* * *

Dear Mr. Holm:

On behalf of the Urban Renewal Agency of the City of Kansas City, Kansas, you request my opinion whether the voluntary acquisition of an interest in Urban Renewal property by an employee of the Board of Public Utilities of the City of Kansas City, Kansas, would be in violation of K.S.A. 17-4758, which states in pertinent part thus:

"No public official or employee of a municipality (or board or commission thereof) . . . shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality or in any contract or proposed contract in connection with such urban renewal project."

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You advise that on June 26, 1975, Hosea Ellis Sowell and his wife entered into a contract with the Agency to purchase Agency Resale Parcel 51R, located in the Silver City Urban Renewal Project, Kans. R-12. In February, 1976, Mr. Sowell was appointed to the legal department of the Board of Public Utilities. The Board is hesitant to transfer title to the property to Mr. Sowell, because of the possible applicability of K.S.A. 17-4758.

You point out that in *Anderson v. City of Parsons*, 209 Kan. 337, 496 P.2d 1333 (1972), the court held that the statutory disqualification applied to acquisition of an interest in property located in a specific urban renewal project, rather than merely with the general urban renewal area. Here, the property in question is located within a specific urban renewal project, and thus falls within the statutory prohibition, as construed by the court in that case.

The question which remains is whether Mr. Sowell, as an employee of the Board of Public Utilities, is an "employee of a municipality (or board or commission thereof)," as that phrase appears in K.S.A. 17-4758.

As pointed out in an earlier opinion from this office, the prohibition of K.S.A. 17-4758 is "absolute and unqualified." It extends not only to employees of the municipality, but also to employees of all boards and commissions thereof. Without question, the utilities operated by the Board are municipally-owned utilities. *Board of Public Utilities of Kansas City v. Kansas City Power & Light Co.*, 139 Kan. 842, 33 P.2d 320 (1934). Management, operation, maintenance and control of the city-owned utilities are vested in the Board, whose members are elected directly by the voters of the city. K.S.A. 13-1220, -1221. The Board is vested with "exclusive control" of the electricity and water plants. K.S.A. 13-1223. However, the fact that operation of the utilities is vested in an independent administrative body does not relieve the city of liability for injuries for which the Board is responsible. *Seely v. Board of Public Utilities*, 143 Kan. 965, 57 P.2d 471 (1936). The city is a necessary and indispensable party to actions against the Board for such injuries. The Board is not a legal entity or quasi-municipal corporation independent of the city. It is, in fact, an administrative body of the city empowered directly by statute to administer and operate the city-owned utilities substantially free from control of the city governing body. It remains, nonetheless, an agency or board of the city itself.

I have the benefit of a letter from Mr. Sowell, setting forth his position in the matter, urging that so long as he fully discloses his interest and employment, and so long as there is no apparent taint, abuse, fraud or other showing of wrongdoing, the prohibition

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imposed by the first paragraph of K.S.A. 17-4758 is inapplicable. I cannot agree. That prohibition operates without regard to actual fraud or conflict of interest. Its absolute terms are designed to forestall even the appearance of or temptation to impropriety by city officers and employees.

I can but conclude that Mr. Sowell, as an employee of the Board of Public Utilities of the City of Kansas City, Kansas, is an employee of a board of the city, and is thus prohibited by the first paragraph of K.S.A. 17-4758 from acquiring title to the parcel in question.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Hosea Ellis Sowell
Attorney at Law
454 New Brotherhood Building
Kansas City, Kansas 66101