



*Overruled in Attorney  
General Opinion # 79-255.*

STATE OF

**Office of the A**

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**Curt T. Schneider**  
Attorney General

April 14, 1976

ATTORNEY GENERAL OPINION NO. 76- 127

Mr. Gary House  
Chautauqua County Attorney  
Chautauqua County Courthouse  
Sedan, Kansas 67361

Re: Counties--Offices--Qualifications

Synopsis: A member of a board of education of a unified school district is not legally ineligible thereby from seeking election to and serving in the office of county commissioner.

\* \* \*

Dear Mr. House:

You request my opinion concerning the eligibility of a member of the board of education of unified school district No. 286 to be elected to and serve in the office of county commissioner of Chautauqua County.

K.S.A. 19-205 states thus:

"No person holding any state, county, township or city office shall be eligible to the office of county commissioner in any county in this state."

As you point out, this prohibition does not extend to school district offices. There being no statutory prohibition, the only question which remains is whether the two offices are legally incompatible. The test for the determination was set forth in *Dyche v. Davis*, 92 Kan. 971 (1914):

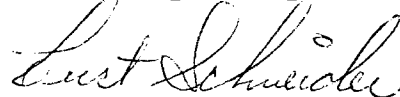
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"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. It is an inconsistency in the functions of the two offices." 92 Kan. at 977.

There appears to be no legal incompatibility or inconsistency in the functions and responsibilities of the two offices.

Accordingly, I agree fully with you, that there is no legal objection to the eligibility of the candidate in question on the basis of his present office as a member of the board of education of a unified school district.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj