



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

April 14, 1976

ATTORNEY GENERAL OPINION NO. 76-128

Mr. Don Vsetecka  
Finney County Attorney  
118 West Pine Street  
Garden City, Kansas 67846

Re: Counties--Mental Health Centers--Conflict of Interest

Synopsis: A member of a nonprofit corporation organized to provide mental health and/or retardation services under K.S.A. 19-4007 is not prohibited by the Kansas general conflict of interest law from renting real property to said corporation for the operation of a mental health and/or retardation center thereon.

\* \* \*

Dear Mr. Vsetecka:

You inquire whether under the Kansas conflict of interest law, a person who serves as president of a nonprofit corporation which provides services to mentally retarded adults and which receives substantial state funds as well as local funding, may receive rent on facilities privately owned by him which he leases to the nonprofit corporation.

You advise that the president of the Finney County Mental Retardation Services, a nonprofit corporation which operates the Iva Whitely Center for Retarded Adults, owns the building in which the center conducts its programs, and leases the building to the corporation for the sum of \$700 per month.

K.S.A. 1975 Supp. 75-4304, of the general conflict of interest law, prohibits a public officer acting in his capacity as a public officer from making or participating in the making of a contract with any person or business by which he is employed, or in which

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he has a substantial interest as that term is defined by the act. A "public officer" is "[a]ny person who holds public office in the state of Kansas." K.S.A. 1975 Supp. 75-4301. A person who is president or an officer of a nonprofit corporation organized to provide services for the mentally retarded pursuant to K.S.A. 19-4007 is not, by virtue of that position alone, a public officer of the state. Thus, the statutory conflict of interest provisions are inapplicable.

Concerning the rule governing transactions between a corporation and its officers, the writer states thus in 19 Am.Jur.2d, *Corporations*, § 1291:

"The view is taken that a director or officer of a corporation is not absolutely precluded by his official position from dealing or entering into a contract with the corporation, nor is such a transaction void per se. It is held that transactions between a corporation and its officers or directors are not void, but only voidable at the option of the corporation. While it is true, on the one hand, that where the directors or officers of a corporation deal with themselves as individuals, the transactions are subject to the closest scrutiny under the most searching light of truth, and must be characterized by absolutely good faith, the view is taken that a contract or transaction between a corporation and a director or officer thereof is valid if the director or officer acted in good faith and there is no fraud or unfairness in the transaction." [Footnotes omitted.]

In *Inscho v. Mid-Continent Development Co.*, 94 Kan. 370 (1915), the court stated that "Generally a corporation may contract with its officers and directors if the transaction be untainted by bad faith."

You advise that the previous tenant of the property has indicated that he was paying \$600 per month for a commercial business operated in the premises. That fact alone does not import fraud or unfairness, although it is surely a pertinent fact to be considered in evaluating the transaction. If the rental is indeed excessive and operates to the disadvantage of the corporation, the remedy, under general corporation law, is with the directors or stockholders. Where, as here, the corporation is one not for profit, the same remedy applies. In

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addition, here, where the corporation is organized for a single purpose, provision of mental retardation services, and is the sole provider of those services to the county for its program under K.S.A. 19-4001 *et seq.*, the county may redress the bad bargain, if such it be, by indirection by disallowing the amount of any excessive rental in any renewal of its contract with the corporation.

Lastly, the question remains whether the transaction is prohibited by the terms of the agreements under which the corporation receives state and/or federal funds. We are advised by officials of the Department of Social and Rehabilitation Services that rental of property by a member of the corporation to the corporation itself for operation of the center is not prohibited by any federal regulation or by the terms of any state or federal agreement with the corporation.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj