



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 14, 1976

ATTORNEY GENERAL OPINION NO. 76- 153

The Honorable Clark V. Owens
Probate Judge
Sedgwick County Courthouse
Wichita, Kansas

Re: Courts--Probate Judges--Judge Pro Tem

Synopsis: Under K.S.A. 1975 Supp. 59-218, any person appointed to the position of full-time probate judge pro tem may not practice law in the county in which appointed or in any county to which the section applies, for the duration of the appointment.

* * *

Dear Judge Owens:

K.S.A. 1975 Supp. 59-218 provides in pertinent part thus:

"The probate judge may appoint a full-time judge pro tem who shall be an attorney-at-law who renders whatever service is required by the probate judge in fulfilling his duties; and shall serve as pro tem to preside in his place when the probate judge is unavoidably absent, unavailable or otherwise unable or disqualified to sit in any case; who shall receive an annual salary in an amount which is five thousand dollars (\$5,000) less than the annual salary received by the probate judge."

You advise that the present full-time pro tem judge is terminating his service on June 1, 1976, due to disability. As a result of the

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enactment of House Bills 2729 and 2129, the full-time pro tem judgeship will be abolished on January 10, 1977. Accordingly, you have found it difficult to locate an attorney with experience and expertise in probate matters who would terminate a law practice for the remaining six months of the position to accept an appointment.

As a result; you inquire whether under this provision, you are authorized to appoint two or more attorneys, who might arrange between them to divide the duties of the position so that neither would be obliged to surrender their respective law practices.

Any person appointed to the position of full-time judge pro tem would be required to terminate the practice of law in the county. The final paragraph of the cited provision states thus:

"The probate judge and the full-time judge pro tem shall not practice law in any court in the county in which he resides or in any county to which this section applies."

Thus, by operation of law, and without regard to the press of the duties of the position, any person appointed to the position of full-time probate judge pro tem would be required to terminate the practice of law for the duration of the appointment.

I note that this cited section goes on to provide thus:

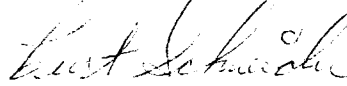
"In addition to other provisions herein the probate judge may appoint a judge pro tem to serve in the probate court when the probate judge and the full-time judge pro tem are unavoidably absent, unavailable or otherwise unable or disqualified to serve who shall receive not to exceed the sum of seventy-five dollars (\$75) per day for each day of service as such judge pro tem or the proportionate portion thereof corresponding to the amount of time served if such service is for less than one day."

In the absence of a full-time probate judge pro tem, appointments under this section would appear to be justified. However, if

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further questions arise concerning this matter, please feel free to contact me.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj