



STATE OF KANSAS

## Office of the Attorney General

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Curt T. Schneider  
Attorney General

July 15, 1976

ATTORNEY GENERAL OPINION NO. 76-217

Mr. David M. Mills  
Dale, Hickman & Mills  
Home National Bank Building  
Post Office Box 896  
Arkansas City, Kansas 67005

Re: Community Junior Colleges--Conflict of Interest

Synopsis: Members of the board of trustees of a community junior college who also serve as members of the board of directors of a nonprofit corporation organized as an endowment association of such college must abstain from participation in the making of any contract between the association and the college.

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Dear Mr. Mills:

As counsel for the board of trustees of the Cowley County Community Junior College, you request my opinion concerning a possible conflict of interest in the relationship between the board of trustees, and the board of directors of the Cowley County Community College Endowment Association.

You advise that the Association was organized several years ago as a nonprofit Kansas corporation. Its sole corporate purpose, as stated in its articles of incorporation, is that of supporting the educational undertaking of the college. Its bylaws also provide for a board of directors of not less than seven nor more than fifteen members. For the past several years, fourteen directors have been elected annually, who manage the affairs of the Association. For at least the past year, the six elected trustees of the College have been elected as directors of the Association, leaving eight outside directors.

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The principal activity of the Association is raising funds for scholarships. In addition, it has purchased two buildings which it leases directly as student housing. It has purchased a small quantity of cosmetology equipment which the college is leasing and paying for out of cosmetology revenues. In addition, it has purchased several lots on which carpentry students have constructed residential housing. In the latter instance, the Association also provides all building materials and sells the completed units, one per year. In the course of their dealings, no public funds pass from the College to the Endowment Association, and it is not contemplated that there will be.

K.S.A. 1975 Supp. 75-4304 states in pertinent part thus:

"(a) No public officer or employee shall in his capacity as such officer or employee, make or participate in the making of a contract with any person or business by which he is employed or in whose business he has a substantial interest, and no such person or business shall enter into any contract where any public officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. A public officer or employee does not make or participate in the making of a contract if he abstains from any action in regard to the contract."

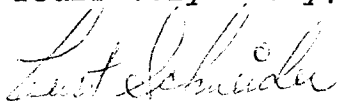
The term "business" is defined by K.S.A. 1975 Supp. 75-4301 to include "[a]ny corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income." The definition does not distinguish between for-profit and nonprofit corporations, and presumptively, the phrase "any corporation" must be taken at face value. The term "substantial interest" is defined to include "the holding of the position of officer or director of any business, irrespective of the amount of compensation or remuneration received by the person holding any such position." It may be argued that the Endowment Association is not a "business." However, it is indeed a corporation, engaged in the raising of funds and the management of assets for the purpose of generating revenue for student scholarships and other uses of the college, and may reasonably be deemed to be engaged in business activities.

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The purpose of the statutory prohibition of K.S.A. 1975 Supp. 75-4304 is to prohibit persons who hold public office from entering into contracts with either themselves as private business persons or with businesses in which they have a substantial interest, and thus profiting privately, at the expense of their public trust. Obviously, in the instance of a nonprofit corporation such as the Endowment Association, which is organized for the precise purpose of serving the interests of a public institution such as the community junior college, there is no actual conflict of interest between the directors of the association and the trustees of the college, because the former are organized expressly to promote the interests of the latter institution. However, the prohibition of K.S.A. 1975 Supp. 75-4304 applies regardless of any actual conflict of interest, and regardless of the likelihood or unlikelihood of any potential conflict.

Certainly, in my judgment, there is no legal compatibility between the positions. However, the act provides little basis upon which I am justified in construing the terms "business" and "substantial interest" to exclude as a matter of law a nonprofit corporation and directors thereof, respectively. As a result, it is my judgment that any contract between the Association and the College could be subject to question on the ground that trustees of the college participated in the making of the contract both as trustees and as directors of the Association, and in the appropriate instance, a court might declare any such contract to be either void or voidable. If the trustees continue to serve on the board of directors of the Association, they must, in my judgment, abstain from participation in the making of any contract between the Association and the College. Any question concerning the validity of any existing contract might be resolved by action of the remaining "outside" directors of the Association to ratify any such contract.

Yours very truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj