



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

August 13, 1976

ATTORNEY GENERAL OPINION NO. 76-260

Thomas R. Powell  
Assistant City Attorney  
City Hall - 13th Floor  
455 North Main  
Wichita, Kansas

Re: Cities--Conflict of Interest--Advisory Boards

Synopsis: A member of the Wichita Real Estate Advisory Board is not disqualified from continued membership and service thereon because of the maintenance of civil litigation against the city by such person concerning private business interests of such member, unrelated to matters within the province of the Board.

\* \* \*

Dear Mr. Powell:

We have your letter of inquiry respecting a possible conflict of interest based upon the information set out therein and in enclosed correspondence. You advise that Mr. John T. Arnold is a member of the Real Estate Advisory Board of the City of Wichita, which was established by Ordinance No. 34-194, effective January 30, 1976. In addition, he is the plaintiff in a pending action in the Sedgwick County District Court against the City of Wichita as a defendant, the action having been filed in the name of V. N. Harris and John T. Arnold d/b/a Vic's Place, a partnership. The plaintiffs in that action seek an amount of not less than \$120,000 for damages allegedly resulting at Sutton Place on June 23, 1974, from the rupture of a city water main and subsequent flooding of an area in the lower level of the building. In addition, he states that as the general partner of Queen Lakes, Ltd., a Kansas limited partnership, he is considering the filing of a second civil action against the City of Wichita, on behalf of the partnership, for alleged damages to a building owned by the partnership at 626 North Broadway, Wichita, as a result of occupancy by O.I.C. and the City of Wichita.

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Mr. Arnold has expressed concern whether any conflict of interest may exist as a result of, first, his prosecution of suits against the city as described above, and secondly, his continuing service and membership on the Real Estate Advisory Board of the city. Because of the city's adverse position in the litigation, the question has been forwarded to this office.

You inquire, first, on the basis of the foregoing facts, whether a conflict of interest exists under K.S.A. 1975 Supp. 75-4301 *et seq.* The only substantive proscription of the act is found at K.S.A. 1975 Supp. 75-4304, which provides that no public officer or employee shall in that capacity make or participate in the making of a contract with any person or business by which such officer or employee has a substantial interest. The facts described in your letter, and that of Mr. Arnold, involve no contract whatever between the City of Wichita and Mr. Arnold or a business in which he has a substantial interest, in the making of which he participated in his capacity as a member of the Advisory Board. Accordingly, I find no basis for concern under this section.

Secondly, you ask whether Mr. Arnold has any duty to file a report of interest in business affected by official acts under K.S.A. 1975 Supp. 75-4305, which provides in pertinent part thus:

"Any public officer or employee who has not filed a disclosure of substantial interests and who, while acting in his official capacity, shall pass upon any matter which will affect any business in which such officer or employee shall hold a substantial interest shall, before he acts upon such matter, file a written report of the nature of said interest . . ."

In my judgment, as a member of the Real Estate Advisory Board of the City of Wichita, Mr. Arnold is neither an "officer" nor an "employee" of the city, and accordingly, neither this section, the preceding section, nor any other section of the general conflict of interest act, K.S.A. 1975 Supp. 75-4301 *et seq.*, is applicable. The responsibility of the Board is set forth in section 3 of the ordinance, to be an "advisory board" to the city commission concerning land use, the financial impact of additions, changes and modifications thereof, and the impact of public streets or any other public use of land, or the economic changes on lands affected thereby. It must report annually on the matters reviewed

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by it. It exercises no sovereign power of the city, and indeed, has no power to act for the city in its corporate capacity whatever. Members of the board serve without compensation, and wield equally little power for and in behalf of the city in its capacity as a municipal corporation. Members act in an advisory role only. In my judgment, they are not officers or employees of the city, and for this reason, no question of a legal conflict of interest arises. See *Jagger v. Green*, 90 Kan. 153, 133 Pac. 174 (1913); *Bassler v. Gordon*, 119 Kan. 40, 237 Pac. 907 (1925); *State ex rel. Coleman v. Rose*, 74 Kan. 262, 86 Pac. 296 (1906).

Thirdly, you ask whether the filing of the lawsuit places Mr. Arnold in a position of acting adversely to the city in litigation or controversy under K.S.A. 12-1601, which states in pertinent part thus:

"It shall be unlawful for any elected or appointed public officer of any city to act as attorney, counselor or adviser adversely to such city in any litigation or controversy in which said city may be directly or indirectly interested."


Once again, this section applies only to officers of the city and is, accordingly, inapplicable to Mr. Arnold as a member of the Real Estate Advisory Board, in my judgment. In addition, even if Mr. Arnold were held to be an "officer" of the city, this section would nonetheless be inapplicable, for it does not disqualify any such officer from bringing legal action against the city as a party. It does disqualify them from acting as an "attorney, counselor or adviser" adversely to the city in such actions. By the general acceptance of these terms, they do not extend to the parties in litigation themselves, but to those acting in their behalf, such as attorneys, counselors and advisers, and the like.

Lastly, you ask whether any common law or other statutory law would prohibit Mr. Arnold's continued membership and service on the Board during the pendency of litigation against the city in which he is a plaintiff. I know of no such prohibition. Even if the position were to be regarded as one of a public office, it in no way appears that prosecution of this civil litigation in any way compromises Mr. Arnold's ability to exercise impartial and unhampered judgment in meeting his responsibilities to advise the city regarding those matters within the province of the Board. The litigation pertains to private business interests which are entirely unrelated to the duties and responsibilities of members of the Real Estate Advisory Board to the city commission and other

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city officials. I find no basis whatever for concluding that a conflict of interest inheres in Mr. Arnold's continued service and membership on the Real Estate Advisory Board during the pendency of the described litigation, for in and of itself, the litigation in no way disqualifies him from the Board on which he presently serves.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:en