

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 19, 1977

ATTORNEY GENERAL OPINION NO. 77-130

Mr. Ray A. Neale
City Attorney
Municipal Building
Coffeyville, Kansas 67337

Re: Cities--Officers--Disqualification

Synopsis: Under K.S.A. 13-2903, a spouse of a city commissioner may serve as a dispatcher for the city police department so long as such person is a civilian employee, and is not appointed as a police officer. The spouse of a city commissioner may not serve as a member of the board of trustees of the city hospital created by K.S.A. 13-14b09. If the dispatcher is not in fact a police officer of the city, her spouse is not disqualified from voting as a member of the city commission upon matters involving the police department, its budget and salaries of its personnel. A city commissioner who is employed as manager or executive director of the city Chamber of Commerce is not disqualified from voting upon matters before the commission involving industrial development and the like which do not involve contracts in which the Chamber has a "substantial interest" as defined by K.S.A. 1976 Supp. 75-4301.

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Dear Mr. Neale:

You pose several questions relating to possible conflicts of interest involving three new members of the Coffeyville city commission. You advise that the wife of one commissioner is a dispatcher for the city police department. The husband of another is a

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physician and serves on the board of trustees of the city hospital. A third commissioner is the manager of the Coffeyville Chamber of Commerce.

K.S.A. 13-290³ states thus:

"The relatives by blood or marriage of the mayor or any commissioner are hereby disqualified from holding any city office during the term for which said mayor or commissioners are elected."

In *Haney v. Cofran*, 94 Kan. 332, 146 P. 1027 (1915), modified at 95 Kan. 335, the court held that a municipal police officer is a public officer. Thus, the position of a police officer of the city of Coffeyville is a public office, and a relative by blood or marriage of the mayor or any commissioner may not hold that office during the term for which said mayor or commissioner is elected. If the position held by the dispatcher is not that of a police officer of the city, the wife of a commissioner may continue to hold that position. Otherwise, however, she is disqualified by operation of law from holding that position upon the commencement of her husband's term of office, unless and until the city should exempt itself from this provision by charter ordinance.


Secondly, you ask whether the husband of another commissioner, who serves as a member of the board of trustees of the city hospital, may continue in that capacity. The question is posed, thus, whether the trustee of a hospital of a city of the first class is an officer of the city. K.S.A. 13-14b09 provides for the appointment of a board of trustees of the hospital. K.S.A. 13-14b10 requires that persons appointed to the board take the oath of "civil officers." Each serves a term prescribed by law. The board is vested with the "exclusive control of the management and operation of the hospital" K.S.A. 14-14b11. In effect, the authority of the city respecting the operation and management of the hospital is vested in the board of trustees, and in that capacity, in effect, they wield the corporate authority of the city as officers thereof. The trustees are not merely agents or employees of the city, but are vested with the entire authority of the city in the management and operation of the hospital. Thus, in my judgment, a member of the hospital board of trustees is an officer of the city, who may not serve in that capacity so long as a relative by blood or marriage serves as mayor or city commissioner.

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If it is determined, on the basis of the foregoing, that the dispatcher is legally not disqualified from that position, your further question remains, whether it would be necessary for her spouse to abstain from any vote of the city commission regarding the police department budget or salaries. If the dispatcher is legally entitled to continue in that position, I see no statutory or other reason why her spouse would be required to disqualify himself from votes of the commission upon matters affecting the department, its budget or salaries of its personnel.

Lastly, you ask whether the manager of the Chamber of Commerce would be required to abstain from voting on questions involving industries and industrial development, other than merely contracts between the Chamber and the city. He is disqualified under K.S.A. 1976 Supp. 75-4304(a) from participating in the making of any contract "with any person or business by which he is employed or in whose business he has a substantial interest," as that interest is defined by law. He is free to participate in city commission action which does not involve any such contract, and including any question concerning industrial development and the like. He would not be disqualified from voting on city business concerning which the Chamber has expressed a position and for which it has stated its support, so long as the action does not constitute the making of a contract in which the Chamber has a "substantial interest," as that term is defined by K.S.A. 1976 Supp. 75-4301.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj