



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 22, 1977

ATTORNEY GENERAL OPINION NO. 77-306

Mr. Mearle D. Mason
Hill, Mason & Gilchrist
810 West Douglas - Suite C
Southwest Citizens Federal Building
Wichita, Kansas 67203

Re: District Officers and Employees--District Attorneys--
Assistant District Attorneys

Synopsis: K.S.A. 22a-106 permits an assistant district attorney to prosecute actions in behalf of a city in municipal court to the extent that such employment does not encroach upon his full performance of the duties and responsibilities of assistant district attorney and that such prosecution does not involve the enforcement of private legal rights of individuals.

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Dear Mr. Mason:

You request as city attorney for the City of Mulvane the opinion of this office whether an assistant district attorney may lawfully take employment as assistant city attorney for the specific purpose of prosecuting cases brought before the municipal court.

K.S.A. 22a-106 provides in pertinent part thus:

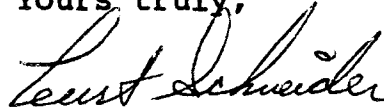
"Each district attorney shall devote *full time* to official duties and shall not engage in the *civil practice* of law, except as required in performing his official duties while serving as district attorney or assistant district attorney" [Emphasis added.]

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The restrictions here concerned pivot upon what is meant by "full time" and "civil practice of law." The Act does not provide definition for either phrase. "Full time" does not appear to create confusion or ambiguity, and can be reasonably construed in general terms to mean that an assistant district attorney must devote to those hours normally identified by the district attorney as necessary to satisfy the duties and responsibilities of his office his undivided professional attention. "Civil practice of law" on the other hand is a term of art which can be defined more precisely. *Ballantine's Law Dictionary* (3rd ed. 1969) defines "civil" as: pertaining to the remedies for enforcement of private rights, as distinguished from criminal prosecutions. Realistically then the civil practice of law would be the pursuit of the enforcement of such private legal remedies which does not appear to entail prosecuting complaints in municipal court.

Accordingly, in my judgment an assistant district attorney may be employed lawfully as a municipal court prosecutor so long as the requirements of such employment did not in any manner detract from the complete and full satisfaction of the duties and responsibilities placed upon him by requirements of the office of assistant district attorney and so long as such municipal prosecution did not entail the pursuit of the enforcement of the private rights of citizens.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj