



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 14, 1977

ATTORNEY GENERAL OPINION NO. 77-357

Mr. Tim W. Ryan
Clay County Attorney
509 Court Street
Clay Center, Kansas 67432

Re: Courts--Clerks--Incompatible Offices

Synopsis: The clerk or deputy clerk of a district court may serve also as clerk of a municipal court, for the two offices are not incompatible. Compensation paid by the city for services as municipal court clerk are not required to be paid over to the county, but remains the property of the person performing those services.

* * *

Dear Mr. Ryan:

You advise that the question has arisen whether the clerk or deputy clerks of the Clay County District Court may act as clerk of the Municipal Court of the City of Clay Center, Kansas, during the hours when the office of the district court clerk is open.

District court clerks, their deputies and assistants are appointed by the administrative judge of the judicial district, pursuant to K.S.A. 1976 Supp. 20-343, which states further that they shall have such "powers, duties and functions as are prescribed by law, prescribed by rules of the supreme court or assigned by the administrative judge," a very general statement comparable to former K.S.A. 19-1302. K.S.A. 12-4108 provides for the office of clerk of the municipal court. The clerk is appointed by the judge of the municipal court, and the duties thereof are stated thus:

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"The clerk shall issue all process of the court, administer oaths, file and preserve all papers, docket cases and set same for trial and shall perform such further acts as may be necessary to carry out the duties and responsibilities of the court."

In *Dyche v. Davis*, 92 Kan. 971 (1914), the court described the test of incompatibility of office thus:

"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. It is an inconsistency in the functions of the two offices." 92 Kan. at 977.

In *Arby v. Gray*, 58 Kan. 149 (1897), the court found that the offices of clerk of the district court and city clerk were not incompatible.

There is no inconsistency whatever between the duties of the clerk of the district court and those of the clerk of the municipal court. Indeed, the duties of the clerk of the municipal court are substantially similar to services provided by the clerk of the district court. The latter officer has, of course, broader administrative responsibilities; however, to the extent that the duties of the municipal court clerk are defined by law, they track precisely those of the clerk of the district court to that extent. Familiarity with the duties of one might well be a material advantage of performing the obligations of the other office. In short, I can find no inconsistency whatever between the two offices, and they are legally compatible, in my opinion.

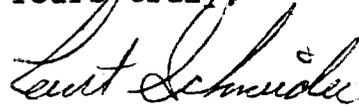
We have no information whether any rule of the Kansas Supreme Court or of the 21st Judicial District regarding the positions of district court clerk or deputies bears upon this question. However, apart from any objection which might be posed by a rule of either court, there is no legal incompatibility between the two offices. The fact that the district court clerk or a deputy district court clerk might serve as municipal court clerk during

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the hours when the former office is open poses no legal objection to the same person serving in both positions. In *Abry v. Gray, supra*, it was objected that the district court clerk must attend personally to a number of the duties of that office, thus forbidding that person to serve also as city clerk. The court dismissed that argument, finding it "quite possible" that the time required of one office would not pose any serious interference to the duties of the other. In short, the fact that the district court clerk or deputy clerk might serve as municipal court clerk during hours when the office of the former is open poses no legal objection to the holding of both offices by one person.

Lastly, you ask whether, if the holding of both offices by one person is permissible, compensation paid by the City of Clay Center, Kansas, for the services of the municipal court clerk should be paid to the individual who serves in that position, or whether the moneys must be turned over to the county treasurer to be credited to the county. In my judgment, the county has no legal claim to moneys paid by the city to a district court clerk or deputy clerk who serves as municipal court clerk. The funds are not paid to the municipal court clerk for any duties or functions which are performed by that person in the capacity of district court clerk or deputy clerk, and are paid to the individual in question for his or her personal services. Thus, the district court clerk or deputy clerk who serves as municipal court clerk is entitled in my judgment to retain any funds paid by the city for service as municipal court clerk.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj