

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 13, 1978

ATTORNEY GENERAL OPINION NO. 78-141

Mr. Donald E. Martin
City Attorney
Ninth Floor - Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: Cities--Public Officers--Attorneys

Synopsis: A municipal judge and a part-time prosecuting attorney of the city are public officers within the meaning of K.S.A. 12-1601. An attorney who is employed on a monthly retainer to represent and advise a particular department of the city, and an attorney who is retained to handle a specific case or class of litigation are not public officers of the city.

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Dear Mr. Martin:

K.S.A. 12-1601 states 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."

You ask if 1) a municipal judge, and 2) a part-time city prosecutor who is paid a monthly salary for such services, with appropriate

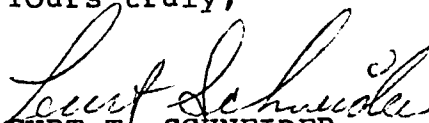
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withholding therefrom, are considered public officers within the meaning of this statute. A municipal judge and a city prosecuting attorney are city officers who wield in their lawful capacity some portion of the sovereign power of the city and, for that reason, must be deemed to be public officers of the city who are prohibited from acting as attorney, counselor, or adviser adversely to the city in any litigation or controversy in which the city may be directly or indirectly interested.

You also ask whether an attorney who is employed on a monthly retainer under contract with the city to represent and advise a department of city government is considered an appointive public officer. An attorney employed in such a capacity is not thereby vested with the exercise of any portion of the sovereign power of the city, and is not a public officer within the meaning of this statute. Likewise, an attorney whose services are engaged by contract for a specific case is not a public officer under this section.

Lastly, you ask whether any members of a law firm which may have one of its attorneys in a position of a public officer of the city should be disqualified from acting as counselor in any action involving the city under this section. The statute does not speak to such disqualifications. This last question raises only a question of the Canons of Professional Responsibility, concerning which this office is not authorized to issue official opinions as matters of law.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj