



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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CURT T. SCHNEIDER
ATTORNEY GENERAL

October 3, 1978

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ATTORNEY GENERAL OPINION NO. 78- 315

Mr. Don Vsetecka
Finney County Attorney
118 West Pine Street
Garden City, Kansas 67846

Re: Public Offices--County Attorney--Incompatibility

Synopsis: The office of county attorney is not incompatible with the office of a member of a board of education of a unified school district, and there is no statutory or other prohibition against a county attorney serving also as a member of such board of education.

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Dear Mr. Vsetecka:

You request my opinion whether a person who is a duly elected and qualified county attorney may accept public office as a member of a board of education of a unified school district and serve therein while county attorney. The question is thus raised whether the offices are incompatible, either by statute or otherwise.

K.S.A. 19-705 provides that the county attorney shall not "while in office be eligible to or hold any judicial or other county office whatsoever." A position on a board of education is clearly an office. It is not, however, a county office, and this statute does not prohibit a county attorney from serving as a member of a board of education.

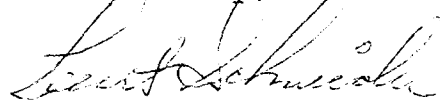
The further question remains whether the duties of the two offices are such as to render the offices incompatible. In Dyche v. Davis, 92 Kan. 971 (1914), the court stated thus:

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"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.

It is unnecessary to elaborate in any detail upon the respective duties of the two offices. In an excellent article in Vol. LVI, No. 10 of the Kansas Government Journal, of October, 1970, Frank Bien reviews the considerations which bear upon a determination of incompatibility. It is clear that the duties of the county attorney in no way operate at cross purposes with the statutory obligations of a board of education, and that the two offices are not incompatible because of the respective duties and obligations of the two offices. In sum, it is my opinion that a county attorney may, while holding his or her office, also serve as a member of a board of education of a unified school district.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj