



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER
ATTORNEY GENERAL

January 2, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 79- 2

Mr. Richard H. Rumsey
Rumsey & Richey
1041 North Waco
Wichita, Kansas 67203

Re: Cities--City Engineer--Conflict of Interest

Synopsis: A city engineer of a city of the third class should not act in behalf of a private client in a matter which will be presented for approval by the city governing body, concerning which the city engineer will be called upon to advise the city governing body in his official capacity.

* * *

Dear Mr. Rumsey:

As counsel for two cities of the third class in Sedgwick County, you request our opinion whether the city engineer of such a city is in violation of any state law when he prepares plats for private parties for submission to the city governing body for its approval. As you point out, he does not, of course, vote on the approval or disapproval of such plats. At the same time, he apparently is placed in a position, on the one hand, of representing a private client in the course of his engineering practice, and, on the other, of advising the city governing bodies as city engineer concerning conformance of such plats to the city requirements.

K.S.A. 15-204 provides that the mayor of a city of the third class may, with the consent of the council, "retain a licensed professional engineer to act in the capacity of city engineer for specifically defined duties." The general duty of a public officer to the public is summarized thus at 63 Am.Jur.2d, *Public Officers and Employees*, § 281:

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"A public officer owes an undivided duty to the public whom he serves, and is not permitted to place himself in a position which will subject him to conflicting duties or expose him to the temptation of acting in any manner other than in the best interests of the public. If he acquired any interest adverse to his principal, without a full disclosure, it is a betrayal of his trust and a breach of confidence."

We do not have a copy of any ordinance which sets out the "specifically defined duties" of the city engineer, as contemplated by K.S.A. 15-204. I assume, for the purposes of this response, that he is not an officer of the city, *i.e.*, that he does not exercise any portion of the sovereign power of the city himself, but that he acts, insofar as concerns the questions you raise, only in an advisory capacity to the governing body, as an employee or independent contractor, retained to advise and consult with the city.

I find no Kansas statute which applies to the circumstances you describe. There is, of course, the rule, embodied in the general doctrine set out above, that a public officer should not act in behalf of the public in a matter in which he or she has a pecuniary interest which is or might lead to action not in the best interests of the public. Here, of course, we deal with a public employee who acts only in advisory and consulting capacity.

In the circumstances described here, the city engineer is placed in a position of some delicacy. On the one hand, having performed work for a private client, he has a substantial interest in the acceptance of that work as complying with city requirements by the governing body. At the same time, as city engineer, he is in a position to advise the governing body regarding the compliance of his own work product with city codes. In many instances, compliance may involve somewhat technical questions, concerning which the city governing body must rely substantially upon his advice and recommendations as city engineer.

It may be argued that if the city engineer makes full disclosure to both the client and to the governing body of his role in preparing a plat offered for its consideration, that the public interest is served and thereby protected. At the same time, should questions of compliance with municipal code requirements involve somewhat technical questions concerning which his technical expertise

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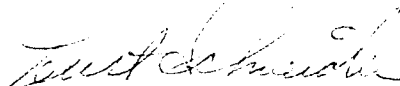
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must be relied upon by lay members of the governing body, it may be argued that even with full disclosure, the governing body is not in a position to scrutinize his recommendations on any technical questions with informed and independent judgment.

For these reasons, there is a serious question whether disclosure constitutes an adequate safeguard against the existence of a potential conflict of interest between the engineer's loyalty to his client, and his duty to the city governing body. In these circumstances, it is my judgment that the city engineer should not act in behalf of a private client in a matter which will come before the city governing body upon which he will be called to advise that body concerning compliance with the municipal codes of that city.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj