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December 26, 1979

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ATTORNEY GENERAL OPINION NO. 79-306

Mr. John Rucker, Administrator
Kansas State Department of Credit Unions
535 Kansas Avenue, 10th Floor
Topeka, Kansas 66603

Re: Kansas State Department of Credit Unions--
Administrator--Eligibility for Office

Synopsis: A person serving as an officer for a credit
union is not thereby ineligible to hold the
position of administrator of the Kansas
State Department of Credit Unions

* * *

Dear Mr. Rucker:

Apparently on your behalf, the immediate predecessor to your office has sought an answer to the question of whether a person serving as an officer of a credit union is eligible to hold the position of administrator of the Kansas State Department of Credit Unions.

K.S.A. 1979 Supp. 17-2233 sets out the qualifications for administrator. Although nothing in this statute precludes the administrator from holding that office while serving as officer in a credit union, the common law doctrine of "incompatibility of offices" must also be considered, in that, under the proper circumstances this doctrine can serve to preclude the holding of an office. However, our search of the Kansas case law in this area fails to reveal a single instance where the doctrine was applied to other than the holding of two public offices or positions of employment simultaneously.

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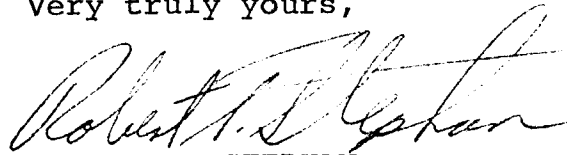
See in accord: Abry v. Gray, 58 Kan. 148 (1897); Dyche v. Davis, 92 Kan. 971 (1914); Congdon v. Knapp, 106 Kan 206 (1920); Moore v. Wesley, 125 Kan. 22 (1928); and Gilbert v. Craddock, 67 Kan. 346 (1903). As applied to the situation presented for our review, it is apparent that you hold a public office (administrator) and a private one (officer of a credit union). Since the doctrine of "incompatibility of offices" is applicable only in those cases in which both positions in question are public in nature, the doctrine is inapplicable to this situation.

Also important to our inquiry are the governmental ethics statutes as contained in K.S.A. 1979 Supp. 46-215 et seq. These statutes serve primarily to promote the disclosure of financial interests. In this vein, the pertinent statutory provisions do not preclude you from holding the office of administrator of the Kansas State Department of Credit Unions.

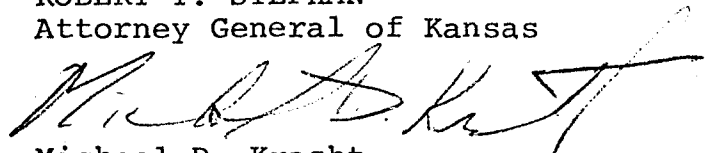
Finally, the Kansas Legislature has enacted several statutes precluding the holding of certain public offices simultaneously with other designated public and non-public positions. A few of these provisions are: K.S.A. 74-605 (Corporation Commissioner); K.S.A. 1979 Supp. 20-2906 (District Judicial Nominating Commission); K.S.A. 40-109 (Insurance Commissioner); and K.S.A. 75-5002 (Highway Advisory Commissioner). A reading of these provisions reveals some of the instances in which the legislature has declared the holding of two offices simultaneously to be improper. Had the legislature intended for such a situation as presented herein to give rise to a prohibition against holding both offices, it would have done so in K.S.A. 1979 Supp. 17-2233, which contains the appointment qualifications for the administrator of the Department of Credit Unions.

In conclusion, our review of the pertinent statutes and case law revealed no legal obstacles to your simultaneously holding the offices in question, and it is our opinion, therefore, that a person serving as an officer of a Kansas credit union is not thereby ineligible to hold the position of administrator of the Kansas State Department of Credit Unions.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Michael D. Kracht
Assistant Attorney General