

STATE OF KANSAS

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June 15, 1981

ATTORNEY GENERAL OPINION NO. 81-136

Mrs. Ona Mae Hunt  
Rt. 3  
Garnett, Kansas 66032

Re: Counties and County Officers -- County Commissioners -- Eligibility to Hold Other Offices

Synopsis: The express prohibition in K.S.A. 1980 Supp. 19-205 precludes one person from simultaneously holding the offices of county commissioner and city clerk. Cited herein: K.S.A. 10-803, K.S.A. 12-3003, and K.S.A. 1980 Supp. 19-205.

\* \* \*

Dear Mrs. Hunt:

You have requested our opinion as to whether you, as a county commissioner, may also hold the office of city clerk of Harris, Kansas, a city of the third class.

K.S.A. 1980 Supp. 19-205 provides in pertinent part:

"No person holding any state, county, township or city office shall be eligible to the office of county commissioner in any county in this state."

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This statute was construed in State ex rel. Kellogg v. Plymell, 46 Kan. 294 (1890), a case on point as to your inquiry. The defendant held the office of city clerk of West Plains, a city of the third class, at the time he qualified and entered upon the discharge of the duties of county commissioner of Meade County. The court ruled that under the statute, one person could not simultaneously hold the offices of county commissioner and city clerk.

Because of the similarity of your inquiry to the issue addressed in that case, we believe the statute and holding of the Kansas Supreme Court in Kellogg v. Plymell, supra, compel the same conclusion and preclude you from concurrently serving as county commissioner and city clerk.

You have suggested that you might "perform the task of the city clerk, voluntarily, and have the Mayor sign each record." In our judgment this would be an unlawful attempt to circumvent the statutory prohibition. In many instances the duties of the city clerk may not be performed by the mayor. For example, specific statutes require the signatures of both the mayor and city clerk on official records and documents. K.S.A. 10-803 provides:

"Warrants and warrant checks shall be signed by the chairman, mayor, president, trustee, director or other chief official . . . and by the clerk, secretary or auditor or like officer . . . ." (Emphasis added.)

Furthermore, the clerk is empowered in some instances to attest the mayor's signature or otherwise endorse his or her actions. Under the provisions of K.S.A. 12-3003:

"The mayor of a council city shall have the power to sign or veto any ordinance passed by the council . . . and if the mayor does not sign his or her approval of the ordinance . . . the ordinance shall take effect without the mayor's signature, such fact to be endorsed by the city clerk . . ." (Emphasis added.)

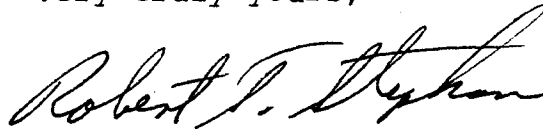
There being expressed and implied statutory provisions that the person discharging the duties of the office of city clerk

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must attach his or her signature to certain documents, we believe the mayor is precluded from substituting his or her signature for that of the actual clerk of the city.

Therefore, the express prohibition in K.S.A. 1980 Supp. 19-205 precludes one person from simultaneously holding the offices of county commissioner and city clerk.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Brenda L. Hoyt  
Assistant Attorney General

RTS:BJS:BLH:hle