



STATE OF KANSAS

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June 28, 1984

ATTORNEY GENERAL OPINION NO. 84- 59

Van Smith  
Hilton Plaza Building, Suite L2  
1135 College Drive  
Garden City, Kansas 67846

Re: Waters and Watercourses -- Groundwater Management  
Districts -- Director Serving as State Legislator;  
No Incompatibility

Synopsis: A director of a groundwater management district organized pursuant to K.S.A. 82a-1020 et seq., may simultaneously hold a position as a state legislator without violating either Kansas statutes or the common law doctrine of incompatibility of offices. Cited herein: K.S.A. 13-1802, 15-1402, 19-205, 82a-1021, 82a-1026, 82a-1027, 82a-1028.

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Dear Mr. Smith:

As attorney for the Southwest Kansas Groundwater Management District (No. 3), you request our opinion on a question concerning the ability of a director of the district to simultaneously serve as a state legislator. You indicate that two of your current board of directors are now candidates for seats in the Kansas House of Representatives, and inquire whether they would continue to qualify for service on the board should their candidacies be successful.

Directors of a groundwater management district organized pursuant to K.S.A. 82a-1020 et seq., are elected at an annual meeting of the district (K.S.A. 82a-1026) at which only persons who qualify

as "eligible voters" may vote. K.S.A. 82a-1021(e). While there are statutes which deal with the qualifications, powers, term of office and duties of a director (K.S.A. 82a-1027, 82a-1028), no statutory provisions appear to speak to the question of holding another elective office, as is the case for counties (K.S.A. 19-205) and some types of cities (K.S.A. 13-1802, 15-1402). Therefore, this situation is governed by decisions of the Kansas Supreme Court which state that an individual can hold more than one public office, provided there is no incompatibility between the offices. Dyche v. Davis, 92 Kan. 971 (1914), Congdon v. Knapp, 106 Kan. 206 (1920).

In the early case of Abry v. Gray, 58 Kan. 148 (1897), the Kansas Supreme Court adopted the essential language of 19 American and English Encyclopedia of Law, 562, as follows:

"The incompatibility which will operate to vacate the first office must be something more than the mere physical impossibility of the performance of the duties of the two offices by one person, and may be said to arise where the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both."

Subsequently, in Dyche v. Davis, supra, the Court held:

"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other. . . . It is an inconsistency in the functions of the two offices." Id. at 977

And, in Congdon v. Knapp, supra, the court ruled that "if one person holds two offices, the performance of the duties of either of which does not in any way interfere with the duties of the other, he is entitled to the compensation for both." Id. at 207.

General authorities also provide practical guidance on the types of interference which gives rise to incompatibility. For example:

"[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbents of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other, as to punish the other. Further-

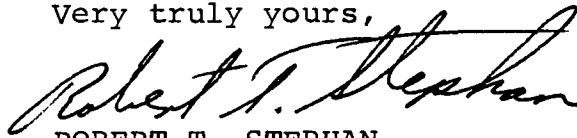
Van Smith  
Page Three

more, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts." 67 C.J.S. Officers §27.

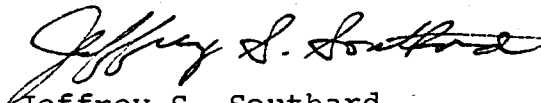
Applying the above standards to the two offices involved here, it is apparent that no conflict sufficient to find incompatibility exists. A state representative can exercise no supervision of any kind over a director of a groundwater management district, nor can he influence the latter's actions or remove him from office. The duties of the two positions are separate and distinct, leaving no room for possible conflict. Conceivably, a problem might arise through the introduction of legislative measures by the representative aimed at his own district. However, as his vote is only one out of 125, the remoteness of this influence is far short of the type of clear and continuing conflict which is dealt with in the above-cited authorities.

In conclusion, a director of a groundwater management district organized pursuant to K.S.A. 82a-1020 et seq., may simultaneously hold a position as a state legislator without violating either Kansas statutes or the common law doctrine of incompatibility of offices.

Very truly yours,



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