



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

August 16, 1985

ATTORNEY GENERAL OPINION NO. 85- 103

Michael G. Barricklow  
Superintendent of Schools  
Unified School District No. 393  
Solomon, Kansas 67480

Re: Cities and Municipalities--Public Recreation and  
Playgrounds--Recreation Commission; Incompatibility  
of Offices

Synopsis: As a condition precedent to making the additional  
tax levy authorized by subsection (c) of K.S.A. 1984  
Supp. 12-1908, as amended by L. 1985, ch. 76, §1, a  
joint recreation commission established by a city and  
a school district must be reorganized to provide for  
the appointment of two members of the board of  
education of the school district. K.S.A. 1984 Supp.  
12-1908(d), as amended. This requirement prevails  
over the common law doctrine of incompatibility of  
offices, and accordingly a member of a board of  
education may simultaneously serve as a member of a  
joint recreation commission. Cited herein: K.S.A.  
12-1907, K.S.A. 1984 Supp. 12-1908, as amended by L.  
1985, ch. 76, §1.

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Dear Mr. Barricklow:

You request our opinion as to whether a member of the board of  
education of Unified School District No. 393 may simultaneously

serve as a member of a joint recreation commission established by a city and a school district pursuant to K.S.A. 12-1907.

Under the provisions of the statute, the governing bodies of a city and school district each appoint two electors to a joint recreation commission, and the persons so appointed select the fifth and final member. Additionally, the statute confers authority upon the commission to "administer in all respects the business and affairs of the recreation commission." It also should be noted that the governing body of a school district must review the budget of a joint recreation commission in determining whether to levy the additional taxes authorized by subsections (b) and (c) of K.S.A. 1984 Supp. 12-1908, as amended by L. 1985, ch. 76, §1.

Although there may be some inconsistency in the above-stated functions of the offices of school board member and recreation board member which would be subject to scrutiny under the common law doctrine of incompatibility of offices (generally, see discussion in Attorney General Opinion No. 85-31), we are bound to consider the provisions of subsection (d) of K.S.A. 1984 Supp. 12-1908 as amended in determining whether one person may hold both positions. That statute mandates that two members of the school board be appointed to the joint recreation commission as a condition precedent to making the additional tax levy authorized by subsection (c) of K.S.A. 1984 Supp. 12-1908 as amended. Such a statutory provision, which in our opinion pre-empts the common law subject of incompatibility of offices, is entitled to a liberal construction. O'Grady v. Potts, 193 Kan. 644, 647 (1964).

Applying such construction, it is our opinion that the provisions of subsection (d) of K.S.A. 1984 Supp. 12-1908 as amended indicate a legislative intent that, notwithstanding any common law doctrines to the contrary, school board members may be appointed to a joint recreation commission. Accordingly, it is our opinion that a member of a board of education may simultaneously serve as a member of a joint recreation commission.

Very truly yours,

  
ROBERT T. STEPHAN

Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General