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ATTORNEY GENERAL OPINION NO. 86- 89

John L. Vratil
Lathrop, Koontz & Norquist
40 Corporate Woods, Suite 1050
9401 Indian Creek Parkway
P.O. Box 25585
Overland Park, Kansas 66225

Re: State Departments; Public Officers and Employees --
Public Officers and Employees -- Conflict of
Interest

Synopsis: A marital relationship between a school board member and an attorney for the school district does not in itself create a conflict of interest. Kansas conflict of interest laws prohibit a public officer from participating in the making of a contract with a business in which he or she has a substantial interest. The school board member can avoid a potential conflict situation by abstaining on any vote concerning the school board's relationship with its current retained counsel, the firm in which her husband is a partner. Cited herein: K.S.A. 75-4301; 75-4304; 75-4306.

* * *

Dear Mr. Vratil:

As chief legal counsel for the Blue Valley school system, Unified School District No. 229, you ask whether your recent marriage to a member of the board of education poses a potential conflict of interest. You state that you are a partner in the law firm retained by the school district and that you handle most of that legal work.

The Kansas laws governing conflict of interest of public officers and employees are found at K.S.A. 75-4301 et seq. K.S.A. 75-4304(a) provides as follows:

"No public officer or employee shall in his or her capacity as such officer or employee, make or participate in the making of a contract with any person or business by which he is employed or in whose business he has a substantial interest, and no such person or business shall enter into any contract where any public officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. A public officer does not make or participate in the making of a contract if he abstains from any action in regard to the contract." (Emphasis added.)

Any person convicted of violating this section must forfeit his or her office or employment and is guilty of a class A misdemeanor. K.S.A. 75-4304, K.S.A. 75-4306.

Under the act it is clear that a school board member is a public officer and that an attorney who acts "only in his or her professional capacity," such as counsel for a school district, is not a public officer. K.S.A. 75-4301. In this case the school board member is prohibited from participating in the making of a contract between the board of education and the district's legal counsel if she, the board member, has a substantial interest in the employment or business of her husband, who is the district's legal counsel.

"Substantial interest" is defined in K.S.A. 74-4301:

"The ownership by an individual or his or her spouse, either individually or collectively of a legal or equitable interest exceeding five thousand dollars (\$5,000) or five percent (5%) of any business, whichever is less, and also including the receipt by an individual or his spouse directly or indirectly of any salary, gratuity, other compensation or remuneration or a contract for or promise or expectation of any such salary, gratuity, other compensation or

remuneration having a dollar value of one thousand dollars (\$1,000) or more in the current or immediately preceding or succeeding calendar year from any business or combination of businesses, and also including the holding of the position of officer or director of any business, irrespective of the amount of compensation or remuneration received by the person holding any such position. If a person's salary, compensation or other remuneration is a portion or percentage of a fee paid to a business or combination of businesses, a person shall have a substantial interest in any client who pays a fee to such business or combination of businesses from which fee such person receives one thousand dollars (\$1,000) or more in the current or immediately preceding calendar year."

A "business" is defined by K.S.A. 75-4301 as "[a]ny corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest. . . ." Clearly, a law firm is a "business" for purposes of the act. Therefore, the school board member has a substantial interest in the law firm which has been retained by the school district.

A marital relationship between a school board member and an attorney for the district, however, does not in itself create a conflict of interest. The law only prohibits a public officer from participating in the making of a contract with a business in which he or she has a substantial interest. K.S.A. 75-4304(a). The school board member can avoid a conflict situation by abstaining on any vote concerning the school board's relationship with its current retained counsel, the firm in which her husband is a partner. [See underscored portion of K.S.A. 75-4304(a), supra.]

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General