



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 9

Robert J. Watson
City Attorney
City Hall, 8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Cities of the First Class--Mayor-Council-City
Manager Form of Government--Position of Council
Member Not Incompatible with that of Chief Attorney
of S.R.S.

Synopsis: Neither Kansas statutes nor the common law doctrine
of incompatibility of offices precludes one person
from holding the position of council member (in a
city of the first class having the mayor-council-
city manager form of government) simultaneously
with that of chief attorney of the Kansas
Department of Social and Rehabilitation Services.
Cited herein: K.S.A. 1987 Supp. 8-1008.

* * *

Dear Mr. Watson:

You request an opinion as to whether a council member of the
city of Overland Park may simultaneously hold the position of
chief attorney for the Kansas Department of Social and
Rehabilitation Services (S.R.S.). You indicate that the only
involvement the city has with S.R.S. is certification of its
alcohol driving safety action program [K.S.A. 1987 Supp.
8-1008(b)].

The question of whether the office of council member in a city
such as Overland Park and chief attorney for S.R.S. (an

unclassified position under the Kansas civil service act) are incompatible has not been dealt with specifically by any Kansas case law. However, there are authorities which deal with the problem of incompatibility generally which can be applied here. In 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, 92 Kan. 971 (1914) 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, 106 Kan. 206 (1920) 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. Furthermore, 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 to the two offices involved here, it is apparent that no conflict sufficient to find incompatibility exists. The chief attorney of S.R.S. can exercise no supervision of any kind over a city council member, nor can he fix or in any way influence the latter's salary or remove him from office. The city of Overland Park's alcoholic driving safety action program is certified by the secretary of Social and Rehabilitation Services, not the chief attorney thereof [see K.S.A. 8-1008(b)]. In short, there appears to be very little relationship between the duties of the two positions, and no instance of the type of continuing conflict which is dealt with in the above-cited authorities.

In conclusion, it is our opinion that neither Kansas statutes nor the common law doctrine of incompatibility of offices precludes one person from holding the position of council member (in a city of the first class having the mayor-council-city manager form of government) simultaneously with that of chief attorney of the Kansas Department of Social and Rehabilitation Services.

Very truly yours,



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