ATTORNEY GENERAL OPINION NO. 89-7

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The Honorable Herman G. Dillon
State Representative, Thirty-Second District
State Capitol, Room 273-W
Topeka, Kansas 66612

Re: Drainage and Levees--Drainage Districts Within Counties or Cities--Position of Director of Drainage District Not Incompatible With That of State Representative

Synopsis: Neither Kansas statutes nor the common law doctrine of incompatibility of offices precludes one person from holding the position of drainage district director simultaneously with that of state representative. Cited herein: K.S.A. 24-401.

Dear Representative Dillon:

You ask whether you may serve on the board of directors of Kaw Valley Drainage District of Wyandotte County and retain your position in the Kansas House of Representatives.

Kaw Valley Drainage District was organized pursuant to K.S.A. 24-401 et seq., and none of the statutes applicable to the district prohibit a director from simultaneously holding another office. Similarly, there is no statutory restriction which would prevent a state representative from simultaneously serving on the board of directors of a drainage district. Therefore, this situation would appear to be 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).

The question of whether the offices of drainage district director and state representative 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, 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 incumbent 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. A state representative can exercise no supervision of
any kind over a drainage district director, nor can he fix or
in any way influence the latter's salary 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 drainage
district. However, as his vote is only one out of 125, the
remoteness of this influence is far short 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 drainage
district director simultaneously with that of state
representative.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:Jm