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ATTORNEY GENERAL OPINION NO. 90- 111

H. Philip Martin
Kansas Racing Commission
702 Broadway, P.O. Box D
Larned, Kansas 67550

Re: State Boards, Commissions and Authorities--
Parimutuel Racing--Kansas Racing Commission;
Political Activities

Synopsis: The common law doctrine of incompatibility of offices is inapplicable to the situation in which a member of the Kansas racing commission attempts to simultaneously serve as either a committeeman or a member of a campaign staff. There appears to be no statutory prohibition regarding such activity. A determination of the applicability of K.S.A. 46-215 et seq. (conflict of interests) to such a situation should be obtained from the Kansas public disclosure commission. The political activities of a member of the Kansas racing commission remain subject to the restrictions set forth in K.S.A. 75-2953 and 75-2974. Cited herein: K.S.A. 25-3901; 25-3902, as amended by L. 1990, ch. 130, § 4; 25-3902a, as amended by L. 1990, ch. 130, § 5; 25-3905, as amended by L. 1990, ch. 130, § 8; 25-3906, as amended by L. 1990, ch. 130, § 9; K.S.A. 1989 Supp. 44-714, as amended by L. 1990, ch. 122, § 17; K.S.A. 46-221; 46-254; 74-2113; K.S.A. 1989 Supp. 74-8801; 74-8803; 74-8804; 74-8806; 74-8813; 74-8817; K.S.A. 75-2953; 75-2974.

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Dear Mr. Martin:

As chairperson of the Kansas racing commission (commission), you request our opinion regarding political activities in which members of the commission may engage. Specifically, you ask whether members of the commission may simultaneously serve as a committeeman or as a member of a campaign staff.

To determine whether an individual may simultaneously serve as a member of the commission and as committeeman or member of a campaign staff, we will consider whether such activity would constitute a violation of common law or of statutory provision other than those statutes regarding conflict of interests. K.S.A. 46-254 states in part:

"The [Kansas public disclosure] commission upon its own initiative may, and upon the request of any individual to which this act applies shall, render an opinion in writing on questions concerning the interpretation of [K.S.A. 46-215 et seq.]. Any person who acts in accordance with the provisions of such an opinion, shall be presumed to have complied with the provisions of this act."

A member of the racing commission falls within the definition of a state officer or employee. See K.S.A. 46-221. Therefore, we will defer to the Kansas public disclosure commission to determine whether simultaneous service as member of the racing commission and as committeeman or member of a campaign staff constitutes a breach of the conflict of interests statutes.

The common law doctrine of incompatibility of offices provides that one individual may not simultaneously hold two public offices where the functions of the two offices concerned are inherently inconsistent, as where there are conflicting interests, or 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. 63A Am.Jur.2d Public Officers and Employees, § 65, 718. The doctrine is also applicable to those situations in which an individual receives two salaries from the public treasury. See Dyche v. Davis, 92 Kan. 971 (1914).

The duties of the commission are set forth in K.S.A. 1989 Supp. 74-8801 et seq. The commission is generally engaged

in activities designed to ensure the credibility of parimutuel racing within the state of Kansas. Among the activities to be undertaken by the commission are the inspection of racetrack facilities, K.S.A. 1989 Supp. 74-8804(a), adoption of rules and regulations pertaining to the administration of drugs and medications to horses and greyhounds within the confines of racetrack facilities, K.S.A. 1989 Supp. 74-8804(k), employment of animal health officers, K.S.A. 1989 Supp. 74-8806, and issuance of licenses, K.S.A. 1989 Supp. 74-8813 to 74-8817. Members of the commission are entitled to compensation "as determined by the governor, subject to the limitations of appropriations therefor." K.S.A. 1989 Supp. 74-8803.

Under K.S.A. 25-3901 et seq., committeemen and committeewomen are to serve at conventions called by the county or state party chairperson. The conventions are called for the purpose of selecting nominees to be appointed by the governor to fill vacancies occurring in a district office, K.S.A. 25-3902, as amended by L. 1990, ch. 130, § 4, or state board of education, K.S.A. 25-3902a, as amended by L. 1990, ch. 130, § 5. Committeemen and committeewomen may also serve on the conventions called to fill vacancies occurring in party candidacies. See K.S.A. 25-3905, as amended by L. 1990, ch. 130, § 8; 25-3906, as amended by L. 1990, ch. 130, § 9. Committeemen and committeewomen are not compensated for their service.

Upon analysis of the duties of the commission and committeemen, we determine that a member of the commission and a committeeman do not engage in functions which are inherently inconsistent or involve conflicting interests. The common law doctrine of incompatibility of offices is inapplicable to such a situation. This determination is further buttressed by the fact that two salaries payable from the public treasury are not involved.

The common law doctrine of incompatibility of offices is also inapplicable when an individual attempts to simultaneously serve as a member of the commission and as a member of a campaign staff. While the doctrine has been interpreted in some jurisdictions to include positions of public employment, 63A Am.Jur.2d Public Officers and Employees, § 65, 718, positions outside public employment have not been subjected to the doctrine. A member of a campaign staff is neither a public officer or employee.

There are no statutes specifically regulating the political activities of members of the commission as there are regarding the political activities of members of the highway patrol, see K.S.A. 74-2113, and certain employees of the Kansas department of human resources, see K.S.A. 1989 Supp. 44-714, as amended by L. 1990, ch. 122, § 17. However, the political activities of members of the commission will be subject to the restrictions set forth in K.S.A. 74-2953 and 75-2974. K.S.A. 75-2953 states in part:

"No officer, agent, clerk or employee of this state shall directly or indirectly use their authority or official influence to compel any officer or employee in the classified service to apply for membership in or become a member of any organization, or to pay or promise to pay any assessment, subscription or contribution, or to take part in any political activity."

Further, K.S.A. 75-2974 states in part:

"No supervising official shall solicit any contribution to or on behalf of any state officer or candidate for state office from any [person holding a position in the classified service] under the supervision of such supervising official."

Therefore, while it is our opinion that a member of the commission is not prohibited from serving as a member of a campaign staff, the member of the commission is prohibited from soliciting contributions from classified employees of the state.

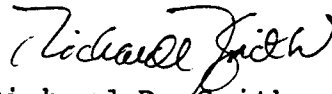
It is our opinion that the common law doctrine of incompatibility of offices is inapplicable to the situation in which a member of the racing commission attempts to simultaneously serve as a committeeman or member of a campaign staff. We are also unaware of any statutory prohibition against such activity. However, whether such activity may

legally be undertaken is subject to determination by the
Kansas public disclosure commission.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

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