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ATTORNEY GENERAL OPINION NO. 91- 80

The Honorable James L. Francisco  
Lieutenant Governor of Kansas  
State Capitol, 2nd Floor  
Topeka, Kansas 66612

Re: State Departments; Public Officers and  
Employees--Lieutenant Governor--Duties; Service as  
Secretary or Head of State Department Upon  
Appointment by Governor

Synopsis: K.S.A. 75-303 does not limit the governor's  
authority to appoint the lieutenant governor to the  
position of chairman of the state parole board.  
Cited herein: K.S.A. 22-3709; 25-2203; 48-924;  
75-125; 75-301; 75-303; 75-3103; Kan. Const.,  
art. 1, § 12.

\* \* \*

Dear Lieutenant Governor Francisco:

You request our opinion regarding whether the governor may  
appoint the lieutenant governor as chairman of the parole  
board in light of the provisions of K.S.A. 75-303.  
Specifically, you question whether the chairman of the parole  
board is "a secretary of a state department or [a] department  
head" for purposes of this statute.

K.S.A. 75-303 provides:

"If the governor determines that in the  
best interest of the state the powers and  
duties of the lieutenant governor should

include serving as a secretary of a state department or as a department head, the governor may appoint the lieutenant governor to such position if the position is required by law to be appointed by the governor. A lieutenant governor appointed to a position in accordance with this section shall be subject to all qualifications established by law for a person holding such position." (Emphasis added).

In our opinion, K.S.A. 75-303 does not confer any power upon the governor that she did not already possess. The Kansas constitution generally sets out the lieutenant governor's duties at article 1, section 12:

"The lieutenant governor shall assist the governor and have such other powers and duties as are prescribed by law."

K.S.A. 75-301 basically mimics this provision. Other statutes prescribing the duties of lieutenant governor include K.S.A. 75-125 (whenever a vacancy shall occur in the office of governor, the lieutenant governor shall become governor), K.S.A. 25-2203 (the lieutenant governor shall be a member of the state election board), and K.S.A. 48-924 (in the absence of the governor from the state, the lieutenant governor may issue a proclamation declaring a state of disaster emergency). Neither the constitution nor the statutes prohibit the lieutenant governor from holding another office. Thus, as long as the second office is not incompatible with that of lieutenant governor and all of the office qualifications are met, there is nothing to prevent the governor from appointing the lieutenant governor to another office over which she has appointment authority. See Abry v. Gray, 58 Kan. 148 (1897). The office of chairman of the parole board is not incompatible with that of the lieutenant governor [see Dyche v. Davis, 92 Kan. 971 (1914) and K.S.A. 22-3709]. The lieutenant governor may therefore be asked to hold both offices regardless whether the chairman of the parole board is considered "a secretary of a state department or as a department head."

The purpose of K.S.A. 75-303, in conjunction with K.S.A. 75-3103(b), appears to be in certain circumstances to allow the governor to fix the dual office holder's salary at something less than the sum of the salaries set by statute for

lieutenant governor and the second position. See Congdon  
v. Knapp, 106 Kan. 206 (1920).

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm