



STATE OF KANSAS

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August 28, 1991

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ATTORNEY GENERAL OPINION NO. 91- 98

The Honorable Don Rezac
State Representative, 61st District
12350 Ranch Road
Emmett, Kansas 66422

Re: Counties and County Officers -- Sheriff -- Deputies
and Undersheriffs; Limitation of Personnel Action

Cities of the Second Class; Commission Government
-- The Board of Commissioners -- Mayor or
Commissioner Holding Other Office; Incompatibility
of Offices

Synopsis: K.S.A. 19-805d provides that a sheriff in deciding
personnel issues is subject to the personnel
policies and procedures established by the board of
county commissioners. A person may not serve
simultaneously as a city commissioner and a deputy
sheriff pursuant to the prohibitions of K.S.A.
14-1302. Cited herein: K.S.A. 14-1302; 19-805d.

* * *

Dear Representative Rezac:

As Representative for the sixty-first district you request our
opinion regarding whether the Pottawatomie county sheriff
may prohibit a deputy sheriff from seeking and, if elected,
holding the office of Wamego city commissioner.

K.S.A. 19-805d outlines the sheriff's duties and limitations
when dealing with personnel matters.

"Any personnel action taken by the sheriff under this section shall be subject to the following: (1) Personnel policies and procedures established by the board of county commissioners for all county employees other than elected officials; (2) any pay plan established by the board of county commissioners for all county employees other than elected officials; (3) any applicable collective bargaining agreements or civil service system; and (4) the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners."

The Pottawatomie county personnel policy manual, as revised in February of 1991, states that "employees are not permitted to be members of councils, boards or commissions that are advisory or administrative to the county, except where such membership is specifically authorized by statute or resolution." Section 10.08.

Based on these provisions, since the position of city commissioner would not involve advising or administering to the county the deputy sheriff would not be prohibited from holding such an office.

However, there does seem to be a conflict with the statutes pertaining to city commissioners.

"No member of the board of commissioners shall hold any office of profit under the laws of any state or the United States, or hold any county or other city office; nor shall the mayor or commissioner ever be elected or appointed to any office created by or the compensation of which was increased or fixed by the board of commissioners while he or she was a member thereof until after the expiration of at least two (2) years after he or she had ceased to be a member of said board."
(Emphasis added). K.S.A. 14-1302.

In Attorney General Opinion No. 82-8, we stated that based on Haney v. Cofran, 94 Kan. 332 (1915), a "deputy sheriff is a county officer" and therefore was ineligible to serve as

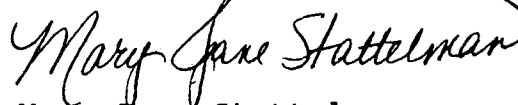
a county commissioner because of prohibition listed in K.S.A. 19-205.

Pursuant to the Pottawatomie county personnel policies the deputy sheriff would not be prohibited from holding a city office if the city commission is not advisory or administrative to the county. However, K.S.A. 14-1302 prohibits a city commissioner from simultaneously serving as a deputy sheriff.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann
Assistant Attorney General

RTS:JLM:MJS:bas