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ATTORNEY GENERAL OPINION NO. 2015- 12

David W. Andreas  
104 ½ W. 9<sup>th</sup>, Ste. 303  
Winfield, KS 67156

Re: Schools—Community Colleges—Community College Elections—Board of Trustees; Composition; Methods of Election; Membership Prohibited for College Employees; Terms of Members

Synopsis: A member of a community college's board of trustees shall not be an employee of the community college; there is no provision allowing a member of the board of trustees to defer his or her term while working as an employee of the community college. Cited herein: K.S.A. 2014 Supp. 71-201; K.S.A. 71-1403(d); 71-1412.

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Dear Mr. Andreas:

As attorney for the Cowley County Community College and for its board of trustees, you ask our opinion on whether a newly-elected member of the community college's board of trustees may simultaneously be employed as an executive-level employee by the community college, including whether the newly-elected trustee can "defer commencing his term of service until he was no longer a College employee" to avoid a conflict of interest.

For the sake of clarity, we will address your question in two parts. First, we note state law dictates that "[n]o member of the board of trustees of a community college shall be an employee of the community college."<sup>1</sup> There is no distinction between executive-level and other employees. As a result, a member of the board of trustees would not be allowed simultaneously to be an employee of the community college.

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<sup>1</sup> K.S.A. 71-1403(d).

You also ask if the newly-elected member of the board of trustees may defer the commencement of his or her term in order to serve as an executive-level employee of the community college on an interim basis while the community college looks for a permanent replacement for the executive-level position. We can find no provision of law that would allow for this to occur. A member's term on the board of trustees begins on July 1 following his or her election.<sup>2</sup> There is no provision that we could find allowing a newly-elected member of the board of trustees to defer the commencement of his or her term. If a newly-elected member of the board of trustees refuses (or is unable) to serve, the seat would be considered vacant and a replacement would need to be appointed.<sup>3</sup> State law requires the board to publish notice of vacancies and appoint a replacement to serve the balance of the unexpired term.<sup>4</sup> This precludes the board from holding a seat open for a member or newly-elected member who wishes to serve temporarily as an employee of the community college or who is otherwise unable or unwilling to serve the balance of his or her term.

In conclusion, Kansas law does not permit a member of a community college's board of trustees simultaneously to be an employee of the community college. We do not believe the laws governing community college trustees allow a member of the board of trustees to defer his or her term while serving as an employee; if a newly-elected member of the board of trustees were to accept employment with the community college instead of serving on the board of trustees, the board would be required to treat the position as vacant and appoint a replacement member to serve the balance of the unexpired term.

Sincerely,

Derek Schmidt  
Kansas Attorney General

Craig Paschang  
Assistant Attorney General

DS:CP

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<sup>2</sup> K.S.A. 71-1412. Beginning on July 1, 2015, the terms for future elected members of a board of trustees will commence on the second Monday of January. See L. 2015 Ch. 88 § 65.

<sup>3</sup> We note that an incumbent is generally entitled to keep his or her seat while a replacement is selected, see *State ex rel. Gregory v. Irely*, 116 Kan. 21 (1924). The same rule applies to members of a community college's board of trustees, who "shall serve until their successors are elected or appointed and qualified." K.S.A. 71-1412.

<sup>4</sup> Pursuant to K.S.A. 2014 Supp. 71-201(b)(15), a community college's board of trustees "shall" publish notice of a vacancy on the board of trustees and appoint a new member to serve the remainder of the unexpired term within 15 days.