

Subject

*Schools - Officers  
Ed. of Education*

Copy to

*Miss  
Conifer of Interest*



STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

July 17, 1974

Opinion No. 74- 239

Mr. James P. Lugar  
Attorney, U.S.D. #203  
7735 Washington Ave.  
Alpine East Bldg.  
Kansas City, Kansas 66112

Dear Mr. Lugar:

As counsel for Unified School District No. 203, you inquire whether a member of the board of education is in conflict with the laws of the State of Kansas if and when his wife is employed by said school district as a substitute teacher and secretary and earns therefrom in excess of \$1000 per annum.

Formerly, this question was governed by K.S.A. 72-1347, which stated thus:

"Any person being related to a school-district officer as a husband or wife, son, daughter, sister or brother, shall not be eligible to the position of teacher in such school district, unless employed by an unanimous vote of all the members of such board."

This section was repealed by ch. 310, § 366, L. 1969.

Today, the question must be determined under the general conflict of interest law, K.S.A. 75-4301 et seq. K.S.A. 75-4304(a) provides thus:

"No public officer or employee shall in his capacity as such officer or employee, make or participate in the making of a contract with any person or business by which he is employed or in whose business he has a substantial interest, and no such person or business shall enter into any contract where any public officer or employee, acting in such capacity, is a signatory to or a participant in the making of

such contract and is employed by or has a substantial interest in such person or business. A public officer or employee does not make or participate in the making of a contract if he abstains from any action in regard to the contract. [Underscored portion added by amendment, ch. 397, § 1, L. 1974.]

The term "substantial interest" is defined in pertinent part as follows by K.S.A. 75-4301:

"The ownership by an individual or his spouse, either individually or collectively of a legal or equitable interest exceeding five thousand dollars (\$5,000) or five percent (5%) of any business, whichever is less, and also including the receipt by an individual or his spouse directly or indirectly of any salary, gratuity, other compensation or remuneration or a contract for or promise or expectation of any such salary, gratuity, other compensation or remuneration having a dollar value of one thousand dollars (\$1,000) or more in the current or immediately preceding or succeeding calendar year from any business or combination of businesses . . . ."  
[Emphasis supplied.]

The term "business" is defined to mean any

"corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income."

Giving this definition a restrictive construction, in view of the penal consequences which attach to violation of the act, employment in a salaried position does not, in and of itself, constitute a "business." Receipt by an individual or his spouse of any salary, gratuity, other compensation or remuneration, or a contract for the receipt thereof, "from any business or combination of businesses" does, of course, constitute a "substantial interest." Where, however, the contract for receipt of compensation is not with a business, defined as any corporation, association, partnership, proprietorship, trust, joint venture, or the like, but with a public governmental entity, e.g., here a school district, that contract is not, in our view, a contract for the receipt of compensation from "any business," as defined by the act.

Accordingly, it is our opinion that the board member is not in violation of the general conflict of interests act, K.S.A. et seq., by virtue of the employment of his wife as described above.

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If, notwithstanding the foregoing, the member in question remains uneasy regarding the employment of his wife by the district, and in order to forestall any unfounded public accusations or suggestions of wrongdoing, he may wish to consider abstention from any vote of the board upon the contract or payment of claims thereunder, pursuant to the 1974 amendment quoted above.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm