



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 28, 1975

Opinion No. 75- 191

Dr. Richard W. Morrison
Superintendent of U.S.D. 465
920 Millington
Winfield, Kansas 67156

Dear Dr. Morrison:

Your recent letter inquires if a "conflict of interest" arises by virtue of the fact that a recently elected school board member is a sister-in-law to a teacher in the school system. Relying on current Kansas statutes, it is our view that no such conflict comes into being.

The question should be determined by the provisions of K.S.A. 1974 Supp. 75-4301 et seq. K.S.A. 1974 Supp. 75-4304(a) provides in part:

"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."

The term "substantial interest" is defined in pertinent part in K.S.A. 1974 Supp. 75-4301 as:

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"'Substantial interest.' 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,"

The term "business" is defined to include 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, because 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.' Of course, receipt by an individual, the teacher here, of any salary, gratuity, other compensation or remuneration, or a contract for the receipt thereof, "from any business or combination of businesses" does constitute a "substantial interest." However, where the contract for receipt of compensation is not with a business as defined above but with a public governmental entity, e.g. a school district, that contract is not a contract for compensation from 'any business' as stated in the act.

This section is designed to prohibit a public officer or employee from acting in his or her official capacity to contract with "any person or business by which he is employed or in whose business he has a substantial interest." This prohibition obviously has no application whatever to the facts you pose.

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Nothing in this section prohibits an individual who is elected to and serving upon a board of education of a unified school district from participating in that official capacity in the making of contracts between the district and an individual teacher who happens to be that member's brother-in-law. As a matter of technical statutory construction, as pointed out above, the teacher, by holding that salaried position with the district, is not engaged in a "business" as defined by the act, and thus, there is lacking that legal and economical relationship between the public official and the contracting party which must be present to invoke the prohibition of the Kansas general conflict of interest act, K.S.A. 1974 Supp. 75-4301 et seq.

Thus, to respond to your specific question, there is no basis in the Kansas conflict of interest law, cited above, upon which to find the employment of a teacher by a board of education, one of the members of which is a sister-in-law of said teacher.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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