



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

December 7, 1976

ATTORNEY GENERAL OPINION NO. 76- 358

Mr. W. Keith Weltmer
Secretary of Administration
Department of Administration
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Cities--Officers--Eligible Persons

Synopsis: A professional corporation organized pursuant to the Kansas Professional Corporation Act, K.S.A. 17-2701 *et seq.* is not eligible to hold the office of city attorney of a Kansas city.

* * *

Dear Secretary Weltmer:

You inquire concerning the responsibility of the division of accounts and reports of the Department of Administration regarding the collection of employer and employee contributions under the Social Security Act respecting certain local officers or employees.

Pursuant to the terms of the act, and the agreement between the State of Kansas, wages paid to elected officials may be exempt, although other employees are covered. K.S.A. 40-2302(c) states thus:

"the term 'employee' includes an officer of the state or political subdivision thereof: *Provided*, That the term 'employee' shall not include elected officials of a political subdivision

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other than the state or counties unless
the elected officials of such political
subdivisions are covered"

The division of accounts and reports has accordingly enforced coverage of appointed officials such as city attorneys with respect to monthly salaries, wages or other compensation, exempting therefrom fees paid for bond work, trial work and like additional compensation. Thus, with regard to monthly compensation set by the governing body of a city for the office of city attorney, that officer has been regarded as an officer of the city, as all other appointed officials.

You advise that recently, and particularly since the inclusion of attorneys in the Professional Corporation Act of Kansas, cities of the second and third class have, in increasing number, appointed professional associations engaged in the practice of law to perform the responsibilities and duties of the office of city attorney authorized under K.S.A. 14-204, 14-205, and 15-204. Ordinances enacted by such cities setting forth compensation for officers and employees reflect the name of the professional association as city attorney and provides for the payment of monthly or annual compensation to be paid to the professional corporation, and not a named individual.

Because the Social Security Act does not require collection of contributions for self-employed persons and independent contractors performing services for political subdivisions, the exact status of the compensation paid to professional associations designated as city attorney is in question.

First, you inquire whether a professional association or corporation organized pursuant to K.S.A. 17-2706 be appointed as city attorney of cities of the second and third class. K.S.A. 14-205 requires that persons appointed to the office of city attorney be qualified electors of the city, except that nonresidents may be appointed as city attorney, municipal judge and as law enforcement officers when deemed necessary. It further provides thus:

"The city attorney shall be a qualified elector of the county in which said city is located or of an adjoining county."

K.S.A. 15-209 contains an identical requirement.

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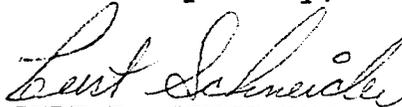
Obviously, a professional corporation or association cannot itself be a qualified elector. Thus, any city which appoints a city attorney under any of these statutes must appoint persons who satisfy the statutory qualifications.

No one of these statutes is uniformly applicable to all cities, however, and any city of the second or third class may exempt itself therefrom by an appropriate charter ordinance. Assuming that a charter ordinance is enacted which removes the status of qualified elector as a qualification for the office of city attorney, the question remains whether a corporation may lawfully hold such a public office. There is scant authority on the question. However, there is no authority whatsoever to support the argument that a corporate entity may lawfully hold a public office and exercise the powers and privileges thereof. What authority our research has disclosed is entirely in support of the position that only natural persons may hold public office. 63 Am.Jur.2d, *Public Officers and Employees*.

Moreover, K.S.A. 17-2710 prescribes the lawful purposes and powers of professional corporations organized under the Kansas Professional Corporation Law, K.S.A. 17-2701 *et seq.* A professional corporation may be organized only for the purpose of rendering professional services as authorized by the act. Neither this overriding lawful purpose, nor the ancillary powers authorized by the act, include the holding of public office and the exercise of the duties and powers thereof.

Accordingly, I can but conclude that a professional corporation organized under K.S.A. 17-2701 *et seq.* may not lawfully hold the office of city attorney.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj