



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

April 28, 1977

ATTORNEY GENERAL OPINION NO. 77-143

Mr. Gary House  
Chautauqua County Attorney  
Post Office Box 417  
Sedan, Kansas 67361

Re: Cities--Officers--Incompatibility

Synopsis: The position of city council member of a city of the third class is not incompatible with the position of administrator of a municipal hospital operated by a board of trustees appointed pursuant to K.S.A. 12-1615.

\* \* \*

Dear Mr. House:

You advise that a newly elected member of the governing body of the City of Sedan, Mr. Gary Martin, who will take office in May, 1977, is employed as administrator of the municipal hospital, and the question has arisen whether there is any conflict of interest or incompatibility of office in the holding of both positions.

As administrator of the hospital, he is employed by the board of directors which operates the hospital, and who are appointed by the city council. As administrator, thus, he is an employee of the hospital board of directors, and perhaps indirectly, an employee of the city. As a council member, of course, he is an officer of the city.

Thus, technically, Mr. Martin does not hold two offices, but one office, that of council member, and a position of employment as administrator. Notwithstanding, both positions are paid from

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public funds, and the Kansas Supreme Court has held that the doctrine of incompatibility of offices must be applied to such circumstances. In Dyche v. Davis, 92 Kan. 971 (1914), the court stated thus:

"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. It is an inconsistency in the functions of the two offices." 92 Kan. at 977.

Offices are incompatible when one has the power of supervision and removal over the other. In an opinion dated November 21, 1972, Attorney General Vern Miller concluded that the office of councilman of the City of Wellington was incompatible with the position of health officer appointed by the joint city-county board of health, on the ground that the council had substantial influence over the performance of duties assigned to the health officer.

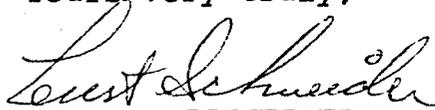
Here, the board of trustees is created pursuant to K.S.A. 12-1615, which provides that in the event of a gift or bequest to a city for the purpose of establishing or operating a public hospital, the governing body shall appoint a board of trustees, in whom title to the gift or bequest shall vest. The city governing body has the power to appoint members to the board, one each year. The city governing body has no other direct or indirect supervisory control over the board, and virtually no opportunity to exercise any direct or indirect power over the hospital administrator. The hospital administrator is subordinate to the board of trustees, and the city council enjoys no statutory control over the actions of the board, save that it appoints the members. Control through the appointment process is further diluted by the fact that the terms of the board members are staggered, and only one member is appointed annually.

In view of these facts, it is my judgment that the two positions are not incompatible, the traditional criteria upon which findings of incompatibility are based do not establish either a direct or indirect relationship between these two positions. Thus, I

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conclude that the position of city council member in the City of Sedan is not incompatible with the position of administrator of the municipal hospital operated pursuant to K.S.A. 12-1615.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj