



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 9, 1977

ATTORNEY GENERAL OPINION NO. 77- 257

The Honorable Jack Steineger
Senate Minority Leader
State Capitol Building
Topeka, Kansas 66612

Re: Public Office--Incompatibility--County or City Employment

Synopsis: There is no legal incompatibility between the office of a member of the Kansas legislature and employment by a county or city as a grants coordinator, and there is no legal conflict of interest inherent in the holding of both positions simultaneously.

* * *

Dear Senator Steineger:

You inquire whether acceptance of a position as a grants coordinator employed by a board of county commissioners or the governing body of a city, with duties as outlined in the attachment to your letter, by a member of the Kansas legislature would conflict with the continued service of that member in the legislative body.

The position is described as a professional administrative and supervisory one, entailing responsibility for monitoring and coordinating information on federal and state programs and grants, and supervising and coordinating the application for such grants and aid. As a coordinator, the individual will be required to maintain current information regarding applicable federal and state legislation and programs, funding levels, and the like, and to monitor all sources of information regarding federal and state assistance. The employee will be required to furnish information regarding such programs to the public, and to public agencies and departments which could be affected by such legislation

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and/or programs. The employee will provide assistance to county or city departments and offices, as the case may be, in the preparation of grant applications, review all such applications prior to submittal to appropriate state and federal agencies, and maintain contact with federal and state governmental representatives concerning programs under their supervision which affect the operations of the county or city.

Article 2, § 5 of the Kansas Constitution states thus:

"No member of congress and no civil officer or employee of the United States or of any department, agency, or instrumentality thereof shall be eligible to be a member of the legislature. Any member of the legislature who accepts any appointment or election contrary to the foregoing shall be disqualified as a member of the legislature."

Those positions which are constitutionally incompatible with legislative office in Kansas are enumerated in this section. It is not at all clear whether, given the constitutionally prescribed qualifications for office and the constitutionally enumerated incompatible positions, whether the common law test incompatibility may also be invoked to disqualify a constitutionally eligible elector from office in the Kansas legislature. However, assuming it were applicable, it is likewise clear that no such incompatibility exists in this instance. 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.

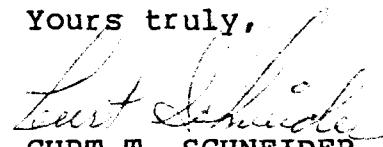
There is nothing in the position of grant coordinator, as described above, which in any fashion conflicts with the duties of legislative office. The position of grant coordinator, in the first instance, is not an office of the county or city. The occupant exercises no sovereign power of the political subdivision, but acts only in an advisory and administrative capacity. Secondly,

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complete fidelity to the duties of the office of legislator entails no official interest in any matter which legally impairs the full and complete performance of the administrative duties of the position of grant coordinator.

In my judgment, there is no conflict of interest inherent in holding both positions, nor is there any legal incompatibility between the two positions which would entail forfeiture of a seat in the Kansas legislature upon acceptance of employment as a grants coordinator, as described above.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj