



STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

July 17, 1980

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ATTORNEY GENERAL OPINION NO. 80-158

Mr. Leonard L. Buddenbohm
Atchison County Counselor
109 North Sixth Street
Atchison, Kansas 66002

Re: Counties and County Officers--County Commissioners--
Eligibility to Hold Other Offices

Synopsis: The common law doctrine of incompatibility of offices does not preclude a county commissioner from concurrently being employed as a filter plant operator by the city water department of a city located within the county where the commissioner holds office. Cited herein: K.S.A. 1979 Supp. 19-205

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Dear Mr. Buddenbohm:

You request our opinion as to whether a county commissioner of Atchison County, which commissioner is also a "filter plant operator" at the City of Atchison water department, "may properly function as a County Commissioner on a subject involving a City within said County if the subject is not in any way related to the Commissioner's City job as defined by the official job description of said job." Also, you inquire about the right of a city "to in any way reprimand a City employee for his statements regarding said City government's actions if the subject of said statements is in no way connected with said employee's job."

K.S.A. 1979 Supp. 19-205 provides, in part, as follows:

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"No person holding any state, county, township or city office shall be eligible to the office of county commissioner in any county in this state."

An individual does not hold a "public office" unless the position includes the right to exercise some definite portion of the sovereign power. Sowers v. Wells, 150 Kan. 630, 633 (1934); see, also, Attorney General Opinion No. 79-108. It requires no extended discussion to conclude that, under such a concept of the term "office," an employee of a city water department is not a "city officer." Therefore, a county commissioner who is employed in a city water department does not come within the prohibition of K.S.A. 19-205.

Thus, in the absence of any statutory prohibition against a county commissioner being employed by a city water department, the resolution of your inquiry (concerning the propriety of an individual functioning in both positions) depends upon application of the common law doctrine of incompatibility of offices. Discussion of the principles involved in applying said doctrine has been the subject of numerous opinions issued by this office, and we will not unduly burden this opinion by lengthy quotations therefrom. However, several of the prior opinions have relevance to your inquiry, and we will, therefore, briefly summarize portions of said opinions.

In Attorney General Opinion No. 79-242, it was noted that application of the doctrine of incompatibility of offices is, for the most part, limited to those situations involving the simultaneous holding of two public offices, as opposed to public positions. However, said opinion also stated that the doctrine has, occasionally, been extended, in some jurisdictions (including Kansas), to include both public offices and public employment without restriction.

In Attorney General Opinion Nos. 79-248 and 79-255, we noted problems involved with an individual simultaneously holding two elective offices with overlapping constituencies, and stated that the doctrine of incompatibility of offices precluded such dual office-holding in the circumstances described therein. We also noted that, in order for the doctrine to be applicable,

"There must be an inconsistency in the functions of the two offices, to the extent that a performance of the duties of one office in some way interferes with the performance of the duties of the other, thus

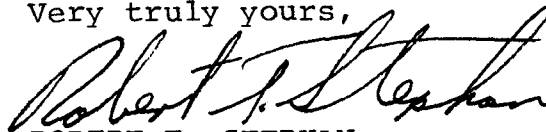
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making it improper, from a public policy standpoint, for one person to retain both offices."

Applying the principles discussed in the above-referenced opinions, it is our judgment that there is no inconsistency between the functions of a county commissioner and a city water department employee (filter plant operator) which would preclude one person from holding both positions. As is noted above, the doctrine of incompatibility of offices has not frequently been applied to the situation of simultaneous holding of public office and holding of public employment. Even if the doctrine were held to be applicable, we perceive no incompatibility in the present situation. We are advised that the duties of the county commissioner in his position as a city water department employee (filter plant operator) primarily involve security and operating responsibilities at the water plant during the nighttime hours. Given this fact, it is our opinion that there is no inherent inconsistency which would prevent the county commissioner-city employee from faithfully, impartially, and efficiently discharging his duties in both positions. In the unlikely circumstance, however, that the county commission some day considers a matter which has an effect upon the commissioner's employment in the city water department, the commissioner should abstain from voting because of the possibility of interest or bias. See 56 Am.Jur.2d Municipal Corporations, §172.

In response to your second question, regarding the right of a city to reprimand an employee in certain circumstances, we must decline to express an opinion. In our judgment, any such opinion, with reference to a specific factual situation, would be an improvident invasion of the employment relationship and would usurp established grievance procedures available to employees of most units of local government.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm