



STATE OF KANSAS

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July 28, 1980

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ATTORNEY GENERAL OPINION NO. 80- 169

Leonard L. Buddenbohm
Effingham City Attorney
109 North 6th Street
Atchison, Kansas 66002

Re: Cities and Municipalities--Municipal Courts--
Qualifications of Municipal Judge; Conviction
of Felony

Synopsis: The qualifications for a municipal judge in a city of the third class may be found at K.S.A. 12-4105 and 15-209, and deal solely with such matters as residency, citizenship and age. No express disqualification of those individuals with felony convictions exists, thus leaving the effect of such a conviction up to the consideration of the city council, pursuant to K.S.A. 15-204. However, such a conviction may also violate Canon 2 of the Code of Judicial Conduct, with such a determination to be made by the State Commission on Judicial Qualifications. Cited herein: K.S.A. 12-4105, 12-4106, 15-204, 15-209, K.S.A. 1979 Supp. 20-176.

* * *

Dear Mr. Buddenbohm:

As Attorney for the City of Effingham, you request our opinion on a matter involving the municipal court judge in that city. Specifically, you wish to know of any statutory barriers which would prevent an individual from filling that position after having been convicted of a felony. While you do not state what the particular offense was, we are informed that it did not involve any type of violence and that the individual is currently on probation.

A review of the statutes covering the position of municipal judge in cities of the third class, such as Effingham, indicates that the post is something of a hybrid, in that it is more than a merely appointive city office, yet less than a full-fledged part of the Kansas judiciary. While K.S.A. 12-4105 requires that a person so appointed must be an American citizen over the age of 18, he or she does not have to be a

Leonard L. Buddenbohm
Page Two
July 28, 1980

lawyer in cities such as Effingham. Nor, according to K.S.A. 15-209, must such person be necessarily a resident of the city or even of the county in which he or she serves. Additionally, while the municipal judge does exercise judicial functions as would any other judge (K.S.A. 12-4106), he or she is appointed by the mayor, with the consent of the city council, and serves at their pleasure, being subject to removal at any time, with or without good cause. K.S.A. 15-204.

Apart from the above, we have been unable to locate any other statutes which speak to the qualifications for a municipal judge in a city such as the one you represent. It would accordingly appear that it is left to the city council to decide whether a felony conviction of this type is sufficient grounds for removal. However, in view of the dual nature of the position, another set of factors (stemming from the judicial functions involved) must also be considered.

We refer here to the Code of Judicial Conduct, which has been adopted by the Supreme Court of this state and appears at K.S.A. 1979 Supp. 20-176. The Code contains "the standard of conduct which should be observed by all judges of this state." Rule No. 601, Introduction. In our opinion, the language of the Code includes municipal judges of the type involved here, for it is further stated (following the end of Canon 7) that "[a]nyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, . . . is a judge for the purpose of this Code." To hold otherwise would be to greatly limit the coverage of the Code, for while the judges in the unified judicial system may number in the dozens, those who sit in municipal courts number in the hundreds. And, as noted above, their functions are clearly judicial in nature, i.e. hearing of cases, imposing of fines or terms of imprisonment, setting bonds, releasing individuals on probation or parole, and so forth.

As it is our opinion that the provisions of the Code apply, we note that a conflict with Canon 2 may be created in a situation such as the one here. There, it is stated:

"A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities. A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

However, it is not for this office to determine whether this or any other Canon has been violated or what appropriate penalty should be ordered. Rather, such decisions are left to the Commission on Judicial Qualifications established by Rule No. 602 (at K.S.A. 1979 Supp. 20-176). This body is empowered to make investigations, either upon the receipt of complaints or upon its own motion, whenever it appears that a judge may have failed to comply with the Code of Judicial Conduct. Whether

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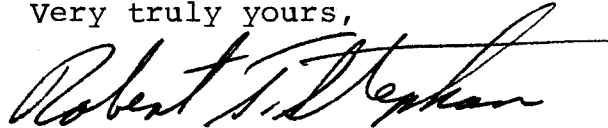
Page Three

July 28, 1980

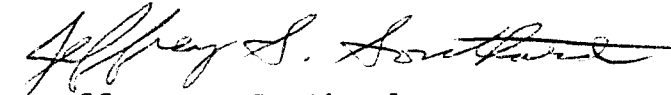
the commission would desire to conduct an investigation in this case is, at this point, entirely within its discretion, it appearing that no complaints have been received concerning this matter.

In conclusion, the qualifications for a municipal judge in a city of the third class may be found at K.S.A. 12-4105 and 15-209, and deal solely with such matters as residency, citizenship and age. No express disqualification of those individuals with felony convictions exists, thus leaving the effect of such a conviction up to the consideration of the city council, pursuant to K.S.A. 15-204. However, such a conviction may also violate Canon 2 of the Code of Judicial Conduct, with such a determination to be made by the State Commission on Judicial Qualifications.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:phf