



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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July 16, 1981

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ATTORNEY GENERAL OPINION NO. 81-164

Janet L. Kuhlman
Scott County Clerk
Courthouse
Scott City, Kansas 67871

Re: Counties and County Officers--Hospitals--Hospital
Trustee also Serving on the Local Board of Education

Synopsis: Neither the provisions of K.S.A. 1980 Supp. 19-1803,
nor the common law doctrine of incompatibility of
offices, precludes a person from concurrently serving
on the board of trustees of a county hospital and
on the board of education of a local school district.
Cited herein: K.S.A. 1980 Supp. 19-1803.

* * *

Dear Ms. Kuhlman:

You have inquired whether a person serving as a trustee of
a county hospital also may serve as a member of a local board
of education. You correctly indicate that under K.S.A. 1980
Supp. 19-1803, county hospital trustees are prohibited from
holding "any state, county or city elective office."

Concerning the foregoing prohibition, this office has consistently
opined that a school board position is not a city or county office.
(See, e.g., Attorney General Opinion Nos. 81-21, 79-255 and 76-127.)
In addition, we find no basis for concluding that a local school
board member is a state officer. Hence, K.S.A. 1980 Supp. 19-1803
does not prohibit a hospital trustee from serving, at the same
time, as a member of a local board of education. However, the
question remains whether the common law doctrine of incompatibility
of offices precludes a person from simultaneously holding both of
these positions.

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The doctrine of incompatibility of offices has been defined, discussed and applied in a number of opinions issued by this office. (See, e.g., Attorney General Opinion Nos. 79-255, 79-251 and 79-248.) The Kansas Supreme Court, in Dyche v. Davis, 92 Kan. 971 (1941), in discussing this doctrine, said:

"Officers 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." 92 Kan. at 977.

Thus, it is apparent the Kansas Supreme Court has determined that incompatibility of offices requires more than a physical impossibility to discharge the duties of both offices at the same time. 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 making it improper, from a public policy standpoint, for one person to retain both offices. This rule is in accord with general authorities. In 89 A.L.R.2d 632, it is stated:

"It is to be found in the character of the offices and their relation to each other, in subordination of the one to the other, and in the nature of the duties and functions which attach to them, and exist where the performance of the duties of the one interferes with the performance of the duties of the other. The offices are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both." (Citations omitted.) Id. at 633.

Further, general authorities provide assistance in determining when the nature and duties of two offices are inconsistent, so as to render them incompatible. For example:

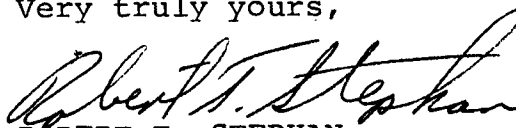
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"[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts." 67 C.J.S. Officers §27.

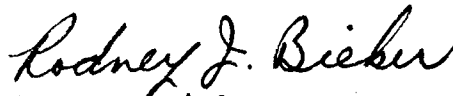
In applying the foregoing to your inquiry, it is our opinion that the office of trustee of a county hospital and the office of board member of a unified school district are not incompatible. We have been unable to discover any specific instance where one office is vested with any direct or indirect supervisory power over the other, and therefore, it is our judgment that, because of the dissimilar nature and duties of the two offices, the functions of these offices are not so inconsistent as to preclude one person from faithfully, impartially and efficiently performing the duties of both offices.

Therefore, it is our opinion that neither the provisions of K.S.A. 1980 Supp. 19-1803, nor the common law doctrine of incompatibility of offices, precludes a person from concurrently serving on the board of trustees of a county hospital and on the board of education of a local school district.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
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RTS:BJS:RJB:jm