



STATE OF KANSAS

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July 17, 1981

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ATTORNEY GENERAL OPINION NO. 81- 170

The Honorable Marvin Wm. Barkis
State Representative - Fifteenth District
510 East Wea
Paola, Kansas 66071

Re: State Departments; Public Officers, Employees --
Public Officers and Employees -- Conflicts of
Interest

Synopsis: An attorney is not precluded from holding the office of county counselor where the attorney's spouse owns the official county newspaper, however, a county counselor serving pursuant to county resolution and fulfilling the duties of K.S.A. 19-247 is a public officer who must file a written report of substantial interest as provided by K.S.A. 75-4301 et seq. Such statement must include ownership interests of the officer's spouse as required by K.S.A. 75-4301 and K.S.A. 75-4304, prohibits an officer from participating in the making of any contract in which he or she has a substantial interest. However, normally, the county counselor will not participate in the designating of or contracting with, local newspapers to publish official county documents. Cited herein: K.S.A. 12-1651, 12-1651a, K.S.A. 1980 Supp. 19-101a, K.S.A. 19-101b, 19-103, 19-227, 19-247, 64-108, 75-4301, 75-4304, 75-4305.

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Dear Representative Barkis:

You request the opinion of this office regarding the potential for a conflict of interest for an attorney appointed as county counselor where the appointee's spouse is the sole owner of the official county newspaper.

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Unlike cities of the second and third class which are specifically authorized to designate an official newspaper, (see K.S.A. 12-1651 and 12-1651a), counties are not required, nor authorized to name an official county newspaper by specific terms of any act of the Kansas legislature. However, authority to designate an "official" county newspaper or designate a paper for particular purposes is certainly to be found in the county enabling statutes. K.S.A. 1980 Supp. 19-101a and K.S.A. 19-101b grant broad powers of local legislation and administration. Both sections refer to the publication of ordinary resolutions and charter resolutions "in the official county newspaper." Other statutes specify only that the county commissioners must publish a certain document "in at least one newspaper in their county." See, for example, K.S.A. 19-227, regarding publication of county financial statements.

Generally speaking, authority to designate which newspaper is to publish a particular legal publication or which paper is to be the official county newspaper, is a matter to be determined by the board of county commissioners (see, generally, K.S.A. 19-103), although there may be a few exceptions (e.g., K.S.A. 64-108, where publication of court documents is determined by a judge of the district court).

In any event, the county counselor is not entrusted with authority to determine "the official publication" or even to vote on such determinations. See K.S.A. 19-247, regarding duties of county counselors. However, Kansas law (K.S.A. 75-4301 et seq.) requires public officers and certain employees to file a declaration of substantial interest. While an attorney at law is exempted from such filing where he or she is acting only in a professional capacity, a person holding the office of county counselor (as opposed to retained counsel on a contract basis) must comply with certain reporting requirements, as follows:

"Any public officer or employee who has not filed a disclosure of substantial interests and who, while acting in his or her official capacity, shall pass upon any matter which will affect any business in which such officer or employee shall hold a substantial interest, shall, before he or she acts upon such matter, file a written report of the nature of said interest with the office of the secretary of state, if such person is a state officer or employee, or if such person is an officer or employee of a municipal or quasi-municipal corporation, with the county clerk of the

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county in which all or the largest geographical part of such municipal or quasi-municipal corporation is located. A public officer or employee does not pass or act upon any matter if he or she abstains from any action in regard to the matter." K.S.A. 75-4305.

Please note that K.S.A. 75-4301 defines substantial interest to include ownership interest of the officer or his or her spouse and K.S.A. 75-4304 prohibits public officers from participating in the making of any contract in which he or she has a substantial interest. That section provides:

"(a) No public officer or employee shall in his or her capacity as such officer or employee, make or participate in the making of a contract with any person or business by which he or she is employed or in whose business he or she has a substantial interest, and no such person or business shall enter into any contract where any public officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. A public officer or employee does not make or participate in the making of a contract if he or she abstains from any action in regard to the contract.

"This section shall not apply to the following:

"(1) Contracts let after competitive bidding has been advertised for by published notice; and

"(2) Contracts for property or services for which the price or rate is fixed by law.

"(b) Any public officer or employee who is convicted of violating this section shall forfeit his or her office or employment."

Therefore, it is our opinion that an attorney is not precluded from holding the office of county counselor where the attorney's spouse owns the official county newspaper, however, a county counselor serving pursuant to county resolution and fulfilling the duties of K.S.A. 19-247 is a public officer who must file a written report of substantial interest as provided by K.S.A. 75-4305.

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Such statement must include ownership interests of the officer's spouse as required by K.S.A. 75-4301 and K.S.A. 75-4304 prohibits an officer from participating in the making of any contract in which he or she has a substantial interest. However, normally, the county counselor will not participate in the designating of or contracting with, local newspapers to publish official county documents.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle