



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-176

The Honorable Edward J. Roitz
State Senator - Thirteenth District
R.R. 1
Pittsburg, Kansas 66762

Re: Schools -- Board Members -- Eligibility to Hold
Other Offices

Synopsis: The common law doctrine of incompatibility of
offices precludes a school board member from
simultaneously holding the office of county com-
missioner or the office of mayor of a third class
city with a mayor-council form of government.
Cited herein: K.S.A. 13-2002, 14-301, 14-1402
and 15-301.

* * *

Dear Senator Roitz:

You request an opinion regarding persons holding two offices
simultaneously. You ask whether a person may properly serve
as mayor of a third class city with a mayor-council form of
government and as a school board member, if the city and school
district have overlapping boundaries. You also inquire about
the propriety of a county commissioner serving as a school
board member where the county and school district overlap.

Although we find no statute, court opinion or prior Attorney
General's opinion which addresses the issue of whether a
mayor of a third class city with a mayor-council form of gov-
ernment may serve as a school board member, Attorney General
Opinion No. 79-248, a copy of which is enclosed, considered
whether a city commissioner of a second class city would be
permitted to hold the office of school board member simultan-
eously. In that opinion, the Attorney General concluded that
while there were no statutory prohibitions, the common law
doctrine of incompatibility of offices would preclude holding
both of these offices at the same time. This conclusion was
reached in part because the constituencies overlapped. As a

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result, the person holding both offices would be required to uphold the best interests of each constituency, but would be unable to do so because of the differing interests of each.

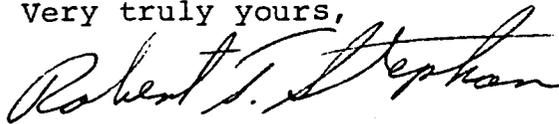
We believe the same rationale applies when the office of mayor is substituted for the office of city commissioner. K.S.A. 15-301 defines the duty of a mayor in a city of the third class with a mayor-council form of government. It provides:

"The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided and none other, and shall have general supervision over the affairs of the city. The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he or she shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty."

The mayor would face the same difficulty in casting a tie-breaking vote on issues involving both the city and the school district as would a city commissioner. In addition, the mayor is charged with generally supervising the affairs of the city and enforcing its laws. Although the mayor functions only in a legislative capacity in case of a tie vote, he makes administrative decisions for the city continually. These decisions might also involve issues in which the school district has competing interests. Thus, in our opinion, the same incompatibility would exist for the mayor as for a commissioner.

The question regarding the propriety of an individual holding the offices of county commissioner and school board member was addressed in Attorney General Opinion No. 79-255 which is enclosed for your convenience. We concluded that the offices were incompatible because the county and school district interests might in some cases be in conflict. We affirm that opinion.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle

Enc.