



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

ATTORNEY GENERAL OPINION NO. 82- 8

Mr. Norman J. Manley
Butler County Counselor
116 North Star Street
El Dorado, Kansas 67042

Re: Counties and County Officers -- County Commissioners --
Incompatibility of Offices

Synopsis: A person may not serve simultaneously as a county commissioner and as a school board member, because of the common law doctrine of incompatibility of offices, nor may a county commissioner serve as a city police officer or as a reserve deputy sheriff because of the statutory prohibition of K.S.A. 1980 Supp. 19-205. Cited herein: K.S.A. 15-204, K.S.A. 1980 Supp. 19-205.

* * *

Dear Mr. Manley:

You ask whether a person may properly serve as county commissioner while continuing to serve as a school board member, part-time city police officer and reserve deputy sheriff.

This office has previously concluded in Attorney General Opinion Nos. 79-255 and 81-176 (copies of which are enclosed) that, because of the common law doctrine of incompatibility of offices, the offices of county commissioner and school board member are incompatible. We reaffirm that conclusion.

Regarding a county commissioner serving as a part-time city police officer, K.S.A. 1980 Supp. 19-205 provides in pertinent part:

"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." (Emphasis added.)

The City of Rose Hill is a city of the third class. Police officers are appointed by the mayor with the consent of the council pursuant to K.S.A. 15-204 which provides for the appointment of all city officers. In addition, the Kansas Supreme Court has characterized police officers as "city officers" in Haney v. Cofran, 94 Kan. 332 (1915). In that case, the Court found the statutory creation of the office, the sovereign functions exercised by police officers and the public nature of their duties as persuasive in determining that policemen are "officers" and not mere employees. See, also, Attorney General Opinion No. 79-256. Therefore, since police officers are recognized as city officers, a county commissioner would be prevented from holding said office by K.S.A. 1980 Supp. 19-205, even though the position is only part-time with a nominal salary. Whether or not one receives a salary for serving in a public office does not change the nature of the office. Bien, Incompatibility of Offices, Kansas Government Journal, Vol. LVI, No. 10 (1970) at 421.

Finally, we consider whether a county commissioner may serve as a reserve deputy sheriff or whether the position of deputy sheriff constitutes a "county office" which may not be held simultaneously with the office of county commissioner pursuant to K.S.A. 1980 Supp. 19-205. Initially, we note that "reserve" deputy sheriffs are not statutorily contemplated. However, it is our understanding that such persons have been commissioned by a sheriff to exercise law enforcement powers, and even though such persons are not full-time, salaried personnel of the sheriff's department, they have been vested with powers of deputy sheriffs, to be exercised in accordance with the conditions and limitations of their respective commissions. Accordingly, in light of the powers exercised by such persons, we attach no significance to their "reserve" status, and for the purpose of this opinion, they must be regarded as deputy sheriffs.

The duties imposed on deputy sheriffs in K.S.A. 19-813 include keeping and preserving the peace, suppressing affrays, riots and unlawful assemblies, and apprehending and securing any felony or breach of the peace. Said duties are similar to those the Kansas Supreme Court considered in determining whether policemen were public officers or employees in Haney v. Cofran, supra. The court concluded that policemen possess extensive powers and exercise functions of sovereignty, and must, therefore, be public officers, not mere employees. Id. at 334. In our opinion, the same rationale applies to deputy sheriffs because of the similarity of the two positions.

In Smith v. Fenner, 102 Kan. 830 (1918), the Kansas court adopted the view that a deputy sheriff was a public officer. In that case, a non-paid deputy sheriff sought to recover a

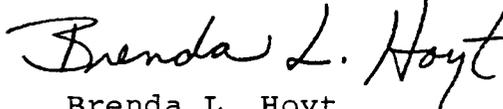
reward for apprehending a thief in accordance with an oral agreement with the defendant. The defendant raised the public policy which forbids a public officer from contracting or demanding larger compensation or higher fees for services rendered in the scope of the officer's official duties. The court applied the rule to the non-paid deputy sheriff, stating that the deputy was a public officer who would be precluded from accepting a reward if the apprehension of the thief fell within the scope of his official duties. Thus, because a deputy sheriff is a county officer, a county commissioner may not serve as a reserve deputy sheriff by virtue of the prohibition in K.S.A. 1980 Supp. 19-205.

Therefore, a person may not serve simultaneously as a county commissioner and as a school board member because of the doctrine of incompatibility of offices, nor may a county commissioner serve as a city police officer or as a reserve deputy sheriff because of the statutory prohibition in K.S.A. 1980 Supp. 19-205.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle:jm