



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. 82-49

The Honorable Wayne C. Riggs  
Mayor  
P. O. Box 87  
McCune, Kansas 66753

Re: Cities of the Third Class -- Mayor-Council Form of  
Government -- Mayor Acting as Dog Catcher

Synopsis: The mayor of a city of the third-class having the  
mayor-council form of government is not precluded  
by statute or by the common-law doctrine of incom-  
patibility of offices from also performing the  
functions of a dog catcher, when such duties are  
vested in him by city ordinance and do not result  
in any additional compensation being paid to him.  
Cited herein: K.S.A. 15-301, 15-1402, 15-1407,  
15-1502.

\* \* \*

Dear Mr. Riggs:

As mayor for the City of McCune, Kansas, you request our  
opinion on a question concerning your ability to simultaneously  
act as the city's dog catcher. You inform us that you have  
been given the duty to impound any domestic animal (including  
dogs) found running at large. (McCune City Ordinance No. 366.)  
In light of prior opinions of this office which indicate that  
it is improper (under some circumstances) for one person to  
hold two city offices at the same time, you wish to know  
whether you may lawfully act under the ordinance as it now  
reads.

In the absence of a charter ordinance, cities of the third  
class in Kansas (of which McCune is one) are provided an op-  
tion by statute as to the form of city government they may  
have. The first, set out by K.S.A. 15-101 et seq. and cur-  
rently in use in McCune, involves a mayor-council system

whereby the mayor is elected from the city as a whole, presides at council meetings, and has "general supervision over the affairs of the city." K.S.A. 15-301. The second, found at K.S.A. 15-1201 et seq., provides for a mayor-commission system whereby the duties of the mayor are less extensive than under the first system, as he is responsible only for certain city departments, including the fire department, (K.S.A. 15-1407), and serves in other respects as a co-equal member of the board of commissioners. K.S.A. 15-1502.

The distinction between these two systems is relevant to this inquiry, for the latter is governed by the provisions of K.S.A. 15-1402, which states that:

"Neither the mayor nor any commissioner shall be elected or appointed to any office created by, or the compensation of which was increased or fixed by, the board of commissioners while he or she was a member thereof, until the expiration of at least two years after such person has ceased to be a member of said board."

Under the facts as you present them, this statute does not apply to McCune, in that a mayor-council, as opposed to a mayor-commission, form of government is in existence. Furthermore, no such statute exists for mayor-council cities. However, the absence of any specific statute on this point does not preclude the application of decisions of the Kansas Supreme Court which do not permit an individual to hold more than one public office if there is an "incompatibility" between the offices. Dyche v. Davis, 92 Kan. 971 (1914), Congdon v. Knapp, 106 Kan. 206 (1920).

The incompatibility doctrine applies in those cases where two public offices are held by the same individual at the same time. In Abry v. Gray, 58 Kan. 148 (1897), the Kansas Supreme Court adopted the essential language of 19 American and English Encyclopedia of Law, 562, as follows:

"The incompatibility which will operate to vacate the first office must be something more than the mere physical impossibility of the performance of the duties of the two offices by one person, and may be said to arise where the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both." Id. at 149.

Subsequently, in Dyche v. Davis, supra, the Court held:

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"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other . . . It is an inconsistency in the functions of the two offices." Id. at 977.

And, in Congdon v. Knapp, supra, the Court ruled that "if one person holds two offices, the performance of the duties of either of which does not in any way interfere with the duties of the other, he is entitled to the compensation for both." Id. at 207.

In our opinion, the doctrine does not apply in this situation, in that two offices are not being held by the same person. Rather, in your position as mayor, you have been given an additional duty to enforce an ordinance of the city which deals with the impounding of stray animals. This is consistent with K.S.A. 15-301, which authorizes the mayor to be "active and vigilant in enforcing all laws and ordinances" of the city. Further, as there is no separate office, no additional compensation is being paid for the animal control duties imposed by the ordinance. This avoids any conflict of interest which could be created by your holding the office of mayor and so being in a position to influence decisions on salary for the animal control position.

In conclusion, the mayor of a city of the third-class having the mayor-council form of government is not precluded by statute or by the common-law doctrine of incompatibility of offices from also performing the functions of a dog catcher, when such duties are vested in him by city ordinance and do not result in any additional compensation being paid to him.

Very truly yours,

ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:hle