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ATTORNEY GENERAL OPINION NO. 83- 11

John E. Bremer
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Re: Counties and County Officers -- Hospitals -- Simultaneous Holding of Another Office by Trustee

Counties and County Officers -- County Commissioners -- Eligibility to Serve Simultaneously as County Hospital Trustee

Synopsis: Even though Charter Resolution No. 3 of Decatur County has made inapplicable to said county that portion of K.S.A. 19-1803 which, inter alia, precludes a trustee of a county hospital from holding another county office, a person who holds the office of county hospital trustee is rendered ineligible to the office of county commissioner by virtue of K.S.A. 19-205, which is uniformly applicable to all counties and, thus, not subject to a county's charter resolution.

While the common law doctrine of incompatibility of offices also would preclude one person from simultaneously holding the offices of county hospital trustee and county commissioner, and it would result in the forfeiture of the first of these offices so held, this doctrine is inapplicable to the situation where a person who holds the office of county hospital trustee is elected to the office of county commissioner, since K.S.A. 19-205 precludes such person from acquiring legal title to the office of county commissioner. Nevertheless, where such person commences upon the duties of the office of county commissioner without resigning the office of county hospital trustee, there exists a vacancy

in the county commissioner position to which such person was elected. However, where such person has served in the capacity of county commissioner as a de facto officer, such person's acts in that capacity are as valid and effectual where they concern the public or the rights of third persons, to the same extent as if such person were an officer de jure. Cited herein: K.S.A. 19-101a, 19-101b, 19-205, 19-704, 19-1803.

* * *

Dear Mr. Bremer:

You indicate that a trustee of the Decatur County Hospital has been elected a county commissioner of Decatur County, and you have posed for our consideration several questions regarding this situation.

First, you note that, in reliance upon Attorney General Opinion No. 77-208, the Board of County Commissioners of Decatur County adopted Charter Resolution No. 3 (effective September 21, 1977), which exempted Decatur County from a portion of the last sentence of K.S.A. 19-1803. That statute provides for the number of, appointment and qualifications of trustees of a county hospital. The last sentence thereof reads as follows: "None of such trustees shall hold any state, county, or city elective office, and not more than one (1) member shall be a physician." (Emphasis added.)

Section I of Charter Resolution No. 3 specifically exempts Decatur County from the emphasized portion of the foregoing quoted provisions. Section II of the resolution then provides that the remaining portion of these provisions is to read as follows: "Provided, however, That not more than one member shall be a physician." In light of these sections, you have inquired whether Charter Resolution No. 3 has removed Decatur County from the prohibition in K.S.A. 19-1803 as to a hospital trustee holding any other state, county or city elective office.

We are unsure as to the impetus for this question. Your letter of inquiry provides no indication of your possible concerns regarding the efficacy of this charter resolution. Also, we have no evidence of any procedural irregularity in its adoption, and in the absence of your suggestions as to any substantive defect, we think it inappropriate for us to explore the gamut of our jurisprudence in search of some infirmity. On its face, Charter Resolution No. 3 would appear to satisfy the statutory requirements for charter resolutions. Although Section II should probably be regarded as ineffectual surplusage, it does not, in our judgment, detract from the substance of the resolution. Hence, it would appear that Charter

Resolution No. 3 has made inapplicable to Decatur County the portion of K.S.A. 19-1803 which precludes a trustee of a county hospital from holding any "state, county, or city elective office."

However, this conclusion should not be construed as suggesting that each state, county, and city elective officer has been emancipated from any other constitutional, statutory or common law constraint regarding dual office holding and is thereby eligible to the office of trustee of the Decatur County Hospital. Charter Resolution No. 3 must be viewed solely from the perspective of the hospital trustee. The fact that any such trustee also holds a state, county or city is no longer a statutory impediment in Decatur County to holding the office of hospital trustee. But, Charter Resolution No. 3 has no effect on the constitutional or statutory requirements for holding any such other state, county or city elective office; nor does it alter the applicability of the common law doctrine of incompatibility of offices.

The foregoing caveat has relevance to your remaining questions. You also have inquired as to the effect of K.S.A. 19-205 on the simultaneous office holding in question. That statute provides as follows:

> "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.
>
> "Nothing in this section shall prohibit the appointment of any county commissioner to any state board, committee, council, commission or similar body which is established pursuant to statutory authority, so long as any county commissioner so appointed is not entitled to receive any pay, compensation, subsistence, mileage or expenses for serving on such body other than that which is provided by law to be paid in accordance with the provisions of K.S.A. 75-3223." (Emphasis added.)

The first paragraph of this statute clearly declares that the holder of any state, county, township or city office shall not be eligible to the office of county commissioner. Since the exemption provided in the second paragraph is inapplicable to the situation you have posed, our initial task is to determine if a trustee of a county hospital is a state, county, township or city officer.

In Attorney General Opinion No. 73-78, Attorney General Vern Miller considered the question whether a county attorney has

a duty to provide advice and counsel to a county hospital's board of trustees. In concluding that a county attorney was obliged to provide such legal assistance pursuant to his responsibilities as county attorney, as prescribed by K.S.A. 19-704, Attorney General Miller stated:

> "You recognize, consistent with the opinions of prior Attorneys General, that the hospital is not a legal entity separate and apart from the county. In an opinion dated May 7, 1968, Attorney General Londerholm concludes that 'a county hospital is merely an extension of county governmental functions.' Addressing the question you raise, in an opinion dated December 11, 1951, Attorney General Harold R. Fatzer stated that
>
> "'a county hospital is a subdivision of the county and that [members of] the board of trustees are county officers and are entitled to the services of the county attorney acting in his official capacity.'" VIII Op. Att'y Gen. 329.

This opinion was relied upon by Attorney General Curt Schneider as "settled precedent" in Attorney General Opinion No. 77-144, and we also concur with the conclusions reached in these prior opinions. Thus, it is our opinion that members of the board of trustees of a county hospital are county officers.

We find further support for our opinion in the recent decision of the Kansas Supreme Court in State ex rel. Murray v. Palmgren, 231 Kan. 524 (1982). In Palmgren, the Court identified the trustees of the Thomas County Hospital as "public officials" (Id. at 526.), and it found the board covered by the Kansas Open Meetings Act, since the board is a "subordinate group" of the Thomas County Board of County Commissioners. Id. at 536. Although not specifically so stating, we believe the court, by clear implication, regarded the trustees as county officers, subordinate to the board of county commissioners.

Therefore, in our judgment, a county hospital trustee is a county officer and, pursuant to K.S.A. 19-205, is not eligible to the office of county commissioner. Our opinion is consistent with all of the reported cases considering similar questions arising under K.S.A. 19-205 and its statutory predecessors. In Rogers v. Slonaker, 32 Kan. 191, 194 (1884), the Court held that a county coroner who was appointed to the office of county commissioner prior to the expiration of his term of office as county coroner was not entitled to hold the office of county commissioner. Similarly, in The State, ex rel., v. Plymell, 46 Kan. 294 (1891), a person holding the

office of city clerk was elected county commissioner. Although such person argued that he was eligible to hold the latter office, because he had resigned his position as city clerk, the Court found that no such resignation had been effected and affirmed the trial court's ouster of such person from the office of county commissioner, stating:

> "A person holding a city office cannot, at the same time, hold the office of county commissioner. (Rogers v. Slonaker, 32 Kas. 191; Gen. Stat. of 1889, ¶1622.) Plymell violated the statute in attempting to qualify and hold the office of county commissioner for several months, while he was still city clerk." Id. at 299.

Subsequent to these cases, an extensive and thorough discussion of this issue was presented in Demaree v. Scates, 50 Kan. 275 (1893). Initially, the Court considered whether the statutory language, "eligible to the office," had reference to a person's eligibility to be elected or eligibility to hold the office of county commissioner. In concluding that it has reference to the eligibility to hold the office, the Court stated:

> "If the statute is a prohibition merely against any person holding any state, county, township or city office . . . from being elected to the office of county commissioner, then a person 'eligible at the election,' that is, 'capable of being legally chosen,' might be elected to the office of county commissioner, and afterwards accept a state, county, township or city office . . . . If 'eligible' is to be construed as to the capacity of being chosen or elected, the statute would be of no actual benefit. It would permit that to be done which it was evidently the purpose of the lawmakers to prevent. They did not desire a county commissioner to hold another office . . . . They evidently intended to prohibit a county commissioner, while holding that office, from being a state, county, township or city officer . . . . This was the evil sought to be avoided by the statute. Therefore, to construe the word 'eligible' as meaning 'legally qualified to hold office,' seems to us to better subserve the spirit, as well as the letter, of the statute." (Emphasis by the Court.) Id. at 279, 280.

The Court also stated:

> "A person may, therefore, hold the office of county commissioner even if, when elected, he is disqualified under the provisions of the statute. If he becomes qualified after the election and before the holding, it is sufficient." (Emphasis added.) Id. at 280.

The Court's last statement was applied in finding that the person seeking the office of county commissioner was eligible to the office. Even though such person held the office of township treasurer at the time of his election as county commissioner, he no longer held the township office at the time he commenced upon his duties as county commissioner. We do not perceive that to be the situation here. As we understand it, the person about whom you inquire did not resign the office of county hospital trustee prior to accepting the office of county commissioner and commencing upon the duties thereof. Thus, such person did not become qualified under K.S.A. 19-205 "before the holding" of the office of county commissioner. Thus, in our judgment, such person is not legally qualified to hold the office of county commissioner, and there currently exists a vacancy in the county commissioner position to which such person was elected.

Before proceeding to your remaining questions, we believe it appropriate to consider the effect the foregoing conclusion has with respect to such person's actions in the capacity of county commissioner. In our judgment, even though such person is ineligible to hold that office, he has served in the capacity of county commissioner as a de facto officer, and in that capacity, such person's acts are valid and effectual where they concern the public or the rights of third persons, to the same extent as if such person were an officer de jure.

We are prompted to this conclusion on the basis of a substantial number of decisions of the Kansas Supreme Court that have addressed this issue. One of the more recent such cases is Olathe Hospital Foundation, Inc. v. Extendicare, Inc., 217 Kan. 546 (1975). There, the Court considered the status of two members of an appeals panel convened under provisions of the Regional Health Programs Act. These members were challenged on the grounds that their terms had expired and they had not taken oaths of office prior to participating in the hearing in question. In concluding that these persons were de facto officers, the Court stated:

> "[T]he persons designated as members of the appeals panel assumed their duties as such under color of authority, performed those

> duties, and were recognized and accepted as public officers by all who dealt with them. These are the classic characteristics of a de facto officer." Id. at 558.

In support of this conclusion, the Court quoted its prior opinion in Railway Co. v. Preston, 63 Kan. 819 (1901). In that case, the Court determined a judge pro tem who continued to act in such capacity after his term of office had expired was a de facto officer. Such determination was predicated on the application of the principles announced in the "landmark" decision of State v. Carroll, 38 Conn. 449, 9 Am.Rep. 409 (1871), from which the Court quoted as follows:

> "'An officer de facto is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons, where the duties of the office were exercised:
>
> "'1. Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people without inquiry to submit to or invoke his action, supposing him to be the officer he assumed to be.
>
> "'2. Under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent requirement or condition, as to take an oath, give a bond, or the like.
>
> "'3. Under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or, by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public.'" 63 Kan. at 823.

Subsequently, the Court in State v. Miller, 222 Kan. 405 (1977), stated as follows:

> "In Olathe Hospital Foundation, Inc. v. Extendicare, Inc. supra, the legal status of two members of an appeal panel, established under the provisions of Regional Health Programs Act, was challenged on the grounds that their terms had expired and they had not taken oaths

> of office prior to the hearing in question. Concerning the characteristics of a de facto officer we held:
>
> "'A person who assumes and performs the duties of a public office under color of authority and is recognized and accepted as the rightful holder of the office by all who deal with him is a de facto officer, even though there may be defects in the manner of his appointment, or he was not eligible for the office, or he failed to conform to some condition precedent to assuming the office.' (Syl. 5.)
>
> "This court has consistently held that a challenge to the authority of a de facto officer must be made at the time he acts and that his actions are not subject to collateral attack. His authority may only be challenged in a direct proceeding brought by the state or one claiming the office. (Olathe Hospital Foundation, Inc. v. Extendicare, Inc., supra; Parvin v. Johnson, supra; and Briggs v. Voss, 73 Kan. 418, 85 Pac. 571.)" 222 Kan. at 414.

Of similar import, we also note the following statement from State v. Roberts, 130 Kan. 754 (1930):

> "The contention of the appellant may readily be conceded that the election of a judge pro tem. in this case was not within the provisions of the statute (R.S. 20-305), but whether properly and legally elected or not, he assumed the duties of the office, was accepted and reputed as being such officer, and was in possession of the office under a fair color or title thereto, which would make him a de facto officer regardless of the legality of his election.
>
> "'An officer de facto is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. A person will be held to be a de facto officer when, and only when, he is in possession, and is exercising the duties, of an office; his incumbency is illegal in some respect; he has at least a fair color of right or title to the office, or has acted as an officer of such a length of time, and under such circumstances of reputation or acquiesence by the public and public authorities, as to afford a presumption

> of appointment or election, and induce people, without inquiry, and relying on the supposition that he is the officer he assumes to be, to submit to or invoke his action . . .' (46 C.J. 1053.)
>
> "'The acts of an officer de facto are as valid and effectual where they concern the public or the rights of third persons, until his title to the office is judged insufficient, as though he were an officer de jure, and the legality of the acts of such an officer cannot be collaterally attacked in a proceeding to which he is not a party.' (46 C.J. 1060, 1061.)" Id. at 756, 757.

The foregoing judicial statements clearly establish that the person about whom you inquire has served in the capacity of county commissioner as a de facto officer.

You next ask if K.S.A. 19-205 is subject to home rule powers. By this, we understand you to question whether a county's board of commissioners may enact a charter resolution exempting the county "from the whole or any part of" this statute. (See K.S.A. 19-101b.) K.S.A. 19-101a(a) First provides that, in exercising their powers of local legislation and administration, "counties shall be subject to all acts of the legislature which apply uniformly to all counties . . . ." K.S.A. 19-205 is uniformly applicable to all counties and, accordingly, may not be made inapplicable in whole or in part to any county by a charter resolution.

Finally, you ask whether the common law doctrine of incompatibility of offices precludes one person from simultaneously holding the offices of county commissioner and county hospital trustee. Because of our previous conclusion regarding the ineligibility of a county hospital trustee to hold the office of county commissioner pursuant to K.S.A. 19-205, our response to this question would be unnecessary, but for the fact that the county hospital trustee in question has in fact served as de facto county commissioner. Thus, in light of his activities as a de facto officer, we think it appropriate to consider this issue.

There are two principal Kansas cases concerning the incompatibility of office. In Abry v. Gray, 58 Kan. 148 (1897), the Court adopted the essential language of 19 American and English Encyclopedia of Law, 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, 92 Kan. 971 (1914), the Court held:

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

Also, in Congdon v. Knapp, 106 Kan. 206 (1920), 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.

Thus, in reading these cases together, it is apparent that 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 repugant, 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:

> "[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." (Emphasis added.) 67 C.J.S. Officers §27.

Similarly, in 63 Am.Jur.2d Public Officers and Employees §74, it is stated:

> "One of the most important tests as to whether offices are incompatible is found in the principle that the incompatibility is recognized whenever one is subordinate to the other in some of its important and principal duties, and subject in some degree to the other's revisory power. Thus, two offices are incompatible where the incumbent of the one has the power of appointment to the other office or the power to remove its incumbent, even though the contingency on which the power may be exercised is remote." (Footnotes omitted.) (Emphasis added.)

In light of the foregoing authorities, particularly the emphasized language in the last two authorities quoted above, we think it clear that the duties and functions of county commissioner and hospital trustee are inherently inconsistent and repugnant so as to render these offices incompatible as a matter of law. This conclusion is prompted primarily by the fact that the office of hospital trustee is subordinate to that of county commissioners. (See Palmgren, supra at 536.) K.S.A. 19-1803 vests in the board of county commissioners the power to appoint the trustees of a county hospital, and it further provides county commissioners with the authority to modify the size of the board of trustees (within certain limitations). The latter power, of course, results in the board of county commissioners having the authority to increase or diminish the potential influence and strength of an individual trustee, depending on whether the number of trustees on the board is decreased or increased.

In our judgment, these statutorily established relationships between the board of county commissioners and the county hospital board of trustees makes it impossible for a person serving simultaneously as a member of both boards to "discharge faithfully, impartially and efficiently the duties of both offices." (89 A.L.R. 2d at 633.) Even if such person in his capacity as county commissioner were to abstain from discussing, participating in or voting on matters affecting his or her incumbency of the office of hospital trustee, such abstention deprives the constituency in his or her county commissioner district of a representative who is free to make independent judgments on such matters. It is our opinion that such constituency is entitled, as a matter of public policy, to an elected representative who can vote without conflict on substantially all matters. Thus, the county commissioner's abstention from voting on matters pertaining to the county hospital would deprive his or her constituency of a representative who is free to make independent judgments on such matters.

We are aware of other statutorily contemplated situations, including those noted in your letter, which might be discussed for the purpose of buttressing the foregoing conclusion. However, we think these conclusions have sufficient legal support so as to obviate the need for further discussion. Accordingly, it is our opinion that, by virtue of the common law doctrine of incompatibility of offices, the offices of county commissioner and county hospital trustee are incompatible as a matter of law.

Having thus determined the incompatibility of these public offices, the question arises as to the effect of such determination. In those Kansas cases where it has been determined that two public offices held by the same person are incompatible, the Court has determined that such person's acceptance of the second office ipso facto vacates the first office held by such person. See, e.g., Gilbert v. Craddock, 67 Kan. 346, 362, 363 (1903), and Moore v. Wesley, 125 Kan. 22 (1928). In the latter case, it was stated:

> "It is inherently incompatible and virtually forbidden by statute (R.S. 21-1602) for a deputy clerk of the court to hold the office of county attorney. It is also inherently incompatible (R.S. 19-704) and expressly forbidden by statute for a county attorney to hold any other county office. (R.S. 19-705.) So, if plaintiff ever had some 'hold-over' claim to the office of county attorney after January 10, 1927, his later acceptance of the office

of deputy clerk of the court had the legal effect of vacating the office of county attorney. (Gilbert v. Craddock, 67 Kan. 346, 72 Pac. 869.)

"In Shell, Judge, v. Cousins et al., 77 Va. 328, 332, it was said:

"'It was the acceptance of the incompatible office and holding the same for even so brief a space of time that forfeited the first office, and, as we have seen above, created an actual vacancy in the same, without any proceedings to remove him whatever, by quo warranto or otherwise; and if the office was thus vacant, and he absolutely out of it, he could in no manner affect the first office by what he did with the second, since resigning one office could not put a party in an office, nor could it restore him to one he had actually vacated.'

"In Mechem on Public Officers the rule is thus stated:

"'It is a well-settled rule of the common law that he who, while occupying one office accepts another incompatible with the first, ipso facto, absolutely vacates the first office and his title is thereby terminated without any other act or proceeding. That the second office is inferior to the first does not affect the rule. And even though the title to the second office fail, as where the election was void, the rule is still the same, nor can the officer then regain possession of his former office, to which another person has been appointed or elected.' (§420.)

"'The general rule, therefore, that the acceptance of, and qualification for, an office incompatible with one then held, is a resignation of the former, is one certain and reliable, as well as one indispensable for the protection of the public.' (§426.)

"So far as our own cases bear on this precise point they recognize this principle. (Abry v. Gray, 58 Kan. 148, 48 Pac. 577; Gilbert v. Craddock, 67 Kan. 346, 72 Pac. 869; Dyche v.

> Davis, 92 Kan. 971, 142 Pac. 264; Congdon v. Knapp, 106 Kan. 206, 187 Pac. 660.) See, also, extended note in L.R.A. 1917 A, 216 et seq." (Emphasis added.) 125 Kan. at 24, 25.

The general authorities quoted by the Court with approval in the foregoing excerpt from Moore, supra, are relevant to the situation considered here. As noted by these authorities, a person who, while holding one office accepts a second office that is incompatible with the first, ipso facto absolutely vacates the first, and this rule obtains regardless of the length of time the second office is held and irrespective of the fact that title to the second office subsequently fails.

Arguably, Moore, supra, might support a finding that, not only is the person in question ineligible to hold the office of county commissioner, but holding such office as a de facto officer has also caused him to forfeit the office of hospital trustee. However, in addition to being offensive to our sense of equity, we are constrained from reaching this conclusion because of the fact that such person never had title to the office of county commissioner. We recognize he has served in such capacity as a de facto officer; yet, "he is not a good officer in point of law." State v. Roberts, supra at 756. He has color of title to the office sufficient to warrant a finding that he is a de facto officer, but he does not hold legal title to the office. Thus, we must decline to apply the doctrine of incompatibility of offices to a situation where the person cannot, as a matter of law, hold the second office. However, we think the ultimate objective of the common law doctrine of incompatibility of offices has been served as a result of our conclusion that such person is ineligible to hold the office of county commissioner.

In summary, therefore, it is our opinion that:

(1) Absent any evidence as to a substantive defect or procedural irregularity in its adoption, it would appear that Charter Resolution No. 3 of Decatur County is a valid exercise of county home rule powers.

(2) Even though said charter resolution has made inapplicable to Decatur County that portion of K.S.A. 19-1803 which precludes a trustee of a county hospital from holding any "state, county, or city elective office," it has no effect on the constitutional or statutory requirements for holding any such other state, county or city elective office. Nor does it alter the applicability of the common law doctrine of incompatibility of offices.

(3) K.S.A. 19-205, which is uniformly applicable to all counties and, thus, not subject to a county's charter resolution, renders ineligible to the office of county commissioner any person who holds another county office. Accordingly, since a member of a county hospital's board of trustees is a county officer, a person holding such office is ineligible to the office of county commissioner.

(4) While the common law doctrine of incompatibility of offices also would preclude one person from simultaneously holding the offices of county hospital trustee and county commissioner, thereby causing the forfeiture of the office of county hospital trustee, this doctrine is inapplicable to the situation where a person who holds the office of county hospital trustee is elected to the office of county commissioner, since K.S.A. 19-205 precludes such person from acquiring legal title to the office of county commissioner.

(5) Nevertheless, where such person commences upon the duties of the office of county commissioner without resigning the office of county hospital trustee, there exists a vacancy in the county commissioner position to which such person was elected. However, where such person has served in the capacity of county commissioner as a de facto officer, such person's acts in that capacity are as valid and effectual where they concern the public or the rights of third persons, to the same extent as if such person were an officer de jure.

Very truly yours,

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