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June 29, 1983

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ATTORNEY GENERAL OPINION NO. 83- 98

The Honorable Michael J. Peterson
State Representative, Thirty-Third District
731 Ann Avenue
Kansas City, Kansas 66101

Re: State Departments; Public Officers, Employees --
Public Officers and Employees -- Conflict of
Interests

Synopsis: A county commissioner is not precluded from holding office because his spouse owns the official county newspaper. However, the commissioner must file the required statement disclosing his financial interest in the newspaper pursuant to K.S.A. 75-4301 et seq., and may not make or participate in the making of contracts with such newspaper. Cited herein: K.S.A. 75-4301, K.S.A. 1982 Supp. 75-4302, K.S.A. 75-4304, 75-4305, 75-4306.

* * *

Dear Representative Peterson:

You request our opinion concerning whether a legal conflict of interests is created where the spouse of a county commissioner owns the county newspaper and whether this ownership precludes him from holding office.

The statutory provisions concerning this question are provided at K.S.A. 75-4301 et seq. These provisions have been discussed in depth in several Kansas Attorney General opinions, including Kansas Attorney General Opinion Nos. 81-170 and 82-144, copies of which you have been provided. While we do not find it necessary to repeat those discussions at length, frequent reference will be made to these opinions.

K.S.A. 75-4304 codifies the common-law rule prohibiting the self-dealing for pecuniary gain by public officials. See State ex rel. v. Schroeder, 199 Kan. 403 (1967) and Kan. Att'y Gen. Op. No. 82-144. In essence this statute provides that no public officer shall make, or participate in the making of, a contract with any business in which he or she has a substantial interest. To do so would create a conflict of interests.

"Substantial interest" is defined in K.S.A. 75-4301, to include:

"The ownership by an individual or his or her spouse, either individually or collectively of a legal . . . interest exceeding . . . (\$5,000) or . . . (5%) of any business . . . and also including the receipt by an individual or his or her spouse directly or indirectly of any salary . . . having a dollar value of . . . (\$1,000) or more"
(Emphasis added.)

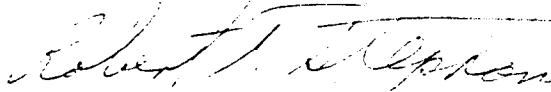
Kansas Attorney General Opinion No. 81-170 considered the possibility of a county counselor holding office while his spouse owned a newspaper designated as the official county newspaper. We concluded there that no conflict of interest existed, but noted that a public disclosure statement had to be filed, pursuant to K.S.A. 75-4302 (now K.S.A. 1982 Supp. 75-4302). In Kansas Attorney General Opinion No. 82-144, we discussed in detail the situation of a company owned by a county commissioner contracting with the county while the commissioner was in office. There, we concluded that a violation of K.S.A. 75-4304 might occur when the commissioner's wholly-owned business entered into contracts with the county which were not let by competitive bid. However, the violation could be avoided if the county commissioner filed the financial disclosure statement required by K.S.A. 75-4302 (now K.S.A. 1982 Supp. 75-4302) and did not make or participate in the making of the contract.

We assume for purposes of this opinion that the amount of the financial interests of the county commissioner or his spouse are equal to, or greater than, \$5,000 or 5% and thus represent a "substantial interest" within the meaning of K.S.A. 75-4301 et seq. These statutes, however, do not preclude the commissioner from holding office or the newspaper from having business dealings with the county if certain conditions are met: First, the public official (county commissioner) must execute and file a public disclosure statement with the Secretary of State pursuant to K.S.A. 1982 Supp. 75-4302. Second, the commissioner must abstain from any participation in the decision-making process concerning the newspaper. K.S.A. 75-4304 and 75-4305.

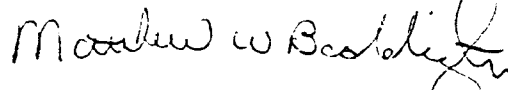
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In conclusion, as long as the county commissioner does not participate in any decisions, abstains from voting on matters affecting the newspaper owned by his spouse, and files the required statement of substantial interest disclosing ownership of the newspaper by the commissioner's spouse, Kansas law does not preclude him from holding office and he may participate in all other matters accordingly.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Matthew W. Boddington
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RTS:BJS:MWB:hle