



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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June 7, 1984

ATTORNEY GENERAL OPINION NO. 84- 49

R. L. Leslie
Nickerson City Attorney
Hess, Leslie & Brown
10 East Fifth Street
P.O. Box 2067
Hutchinson, Kansas 67504

Re: State Departments; Public Officers, Employees--
Public Officers and Employees--Public Officers
and Employees Prohibited from Making Certain
Contracts

Synopsis: In the absence of a city ordinance providing otherwise, a spouse of a council member may hold the office of city treasurer or the office of cemetery superintendent in a city of the second class having the mayor-council form of government, if such spouse is otherwise qualified to be appointed to the office. Additionally, a council member whose spouse holds a city office in a city of the second class is not disqualified from voting (as member of the city council) upon the remuneration for the office which the spouse holds, or upon other matters affecting said city office. Cited herein: K.S.A. 13-2903, 14-205, 14-537, 75-4304.

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Dear Mr. Leslie:

You advise that the spouses of two council members of the city of Nickerson hold city offices (city treasurer and cemetery

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superintendent), and request our opinion as to whether there is an "inherent conflict of interest or other significant legal problem" in such a situation. Additionally, you ask whether a council member whose spouse holds a city office is disqualified from voting upon the remuneration for such office, or upon other matters affecting the office.

The qualifications of officers in second class cities having the mayor-council form of government are specified in K.S.A. 14-205, being only that appointive officers shall be qualified electors of the city. While K.S.A. 14-537 provides that no member of a parks commission in a city of the second class shall be related by blood or marriage to the mayor or any member of the council, there is no statutory provision applicable to second class cities which is similar to K.S.A. 13-2903, which disqualifies relatives of the mayor or any commissioner in first class cities having the commission form of government from holding any city office during the mayor's or commissioner's term. Thus, absent any statute or ordinance prohibiting such a situation, and being unaware of any other principle of law precluding such officeholding, it is our opinion that a spouse of a council member may hold a city office in a city of the second class having the mayor-council form of government, if the spouse is otherwise qualified to be appointed to the office.

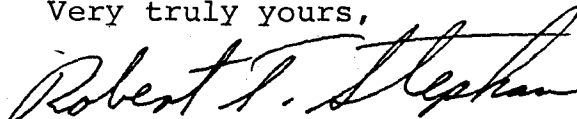
In response to your second question, K.S.A. 75-4304 disqualifies a council member from participating "in the making of a contract with any person or business by which he or she is employed or in whose business he or she has a substantial interest." However, council action upon remuneration for a city office or upon other matters affecting a city office are in no sense a contract between the city and the officer. See 63 Am.Jur,2d, Public Officers and Employees §8. Additionally, you indicate that neither of the council members whose spouses hold offices in the city of Nickerson are employed by their spouses or have substantial interests in businesses of their spouses. Therefore, it is clear that K.S.A. 75-4304 does not disqualify said council members from participating in actions of the Nickerson city council which affect offices held by their spouses.

In regard to common law conflict of interest, it has been stated that the common-law rule focuses on financial or pecuniary interests, and that consanguinity is not a disqualifying adverse interest. 2 C. Sands & M. Libonati, Local Government Law §11.10 (1981). Therefore, in our judgment, and in the absence of a city ordinance providing otherwise, a member of a city council whose spouse holds

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a city office in a city of the second class is not disqualified from voting (as a member of the city council) upon the remuneration for the office which the spouse holds, or upon other matters affecting said city office.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm