



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89-7

The Honorable Herman G. Dillon  
State Representative, Thirty-Second District  
State Capitol, Room 273-W  
Topeka, Kansas 66612

Re: Drainage and Levees--Drainage Districts Within  
Counties or Cities--Position of Director of  
Drainage District Not Incompatible With That of  
State Representative

Synopsis: Neither Kansas statutes nor the common law doctrine  
of incompatibility of offices precludes one person  
from holding the position of drainage district  
director simultaneously with that of state  
representative. Cited herein: K.S.A. 24-401.

\* \* \*

Dear Representative Dillon:

You ask whether you may serve on the board of directors of  
Kaw Valley Drainage District of Wyandotte County and  
retain your position in the Kansas House of Representatives.

Kaw Valley Drainage District was organized pursuant to  
K.S.A. 24-401 et seq., and none of the statutes  
applicable to the district prohibit a director from  
simultaneously holding another office. Similarly, there is no  
statutory restriction which would prevent a state  
representative from simultaneously serving on the board of  
directors of a drainage district. Therefore, this situation  
would appear to be governed by decisions of the Kansas Supreme  
Court which state that an individual can hold more than one

public office, provided there is no incompatibility between the offices. Dyche v. Davis, 92 Kan. 971 (1914), Congdon v. Knapp, 106 Kan. 206 (1920).

The question of whether the offices of drainage district director and state representative are incompatible has not been dealt with specifically by any Kansas case law. However, there are authorities which deal with the problem of incompatibility generally which can be applied here. 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."

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

"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.

General authorities also provide practical guidance on the types of interference which gives rise to incompatibility. For example:


"[A] conflict of interest exists where an 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

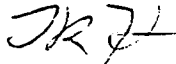
power of appointment as to the other office, or has the power to remove the incumbent of the other, as to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts." 67 C.J.S. Officers §27.

Applying the above to the two offices involved here, it is apparent that no conflict sufficient to find incompatibility exists. A state representative can exercise no supervision of any kind over a drainage district director, nor can he fix or in any way influence the latter's salary or remove him from office. The duties of the two positions are separate and distinct, leaving no room for possible conflict. Conceivably, a problem might arise through the introduction of legislative measures by the representative aimed at his drainage district. However, as his vote is only one out of 125, the remoteness of this influence is far short of the type of continuing conflict which is dealt with in the above-cited authorities.

In conclusion, it is our opinion that neither Kansas statutes nor the common law doctrine of incompatibility of offices precludes one person from holding the position of drainage district director simultaneously with that of state representative.

Very truly yours,

  
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Attorney General of Kansas



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