



STATE OF KANSAS

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February 15, 1991

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ATTORNEY GENERAL OPINION NO. 91- 11

The Honorable Donna Whiteman
State Representative, One Hundred Second District
State Capitol, Room 381-W
Topeka, Kansas 66612

Re: Counties and County Officers--County
Treasurer--County Treasurer; Local Board of
Education; Incompatibility of Offices

Synopsis: Neither Kansas statutes nor the common law doctrine of incompatibility of offices prohibits an individual from simultaneously serving as county treasurer and member of the board of education of a unified school district. Cited herein: K.S.A. 1990 Supp. 12-1922; K.S.A. 19-505; 19-506; 19-506a; 19-507; 19-508a; 19-508b; 19-509; 19-510; 19-515; 19-516; 19-520; 19-524; K.S.A. 1990 Supp. 19-547; K.S.A. 72-8201; 72-8202b; 72-8202c; 72-8202d; 72-8202e; 72-8204a; 72-8205; 72-8209; K.S.A. 1990 Supp. 72-8801.

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Dear Representative Whiteman:

As representative for the one hundred second district, you request our opinion regarding whether an individual currently serving as county treasurer may legally seek the office of member of the board of education of a unified school district wholly or partially located in the county in which the individual serves as county treasurer. You also ask whether the individual may simultaneously serve as county treasurer and member of the board of education.

A review of applicable statutes indicates no statutory prohibition against a county treasurer seeking the office of member of a board of education. While no person holding the office of sheriff, county attorney, county clerk, clerk of the district court, or the deputy of any of them, or member of the board of county commissioners may hold the office of county treasurer, K.S.A. 19-505, no such statutory prohibition exists regarding a member of a board of education. Therefore, a determination of whether an individual may simultaneously serve as county treasurer and member of a board of education will be based on the applicability of the common law doctrine of incompatibility of offices.

An individual is precluded from simultaneously serving in two offices when the nature and duties of the two offices are incompatible.

"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."
Abry v. Gray, 58 Kan. 148, 149
(1897).

"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. It is an inconsistency in the functions of the two offices."
Dyche v. Davis, 92 Kan. 971, 977
(1914).

A board of education of a unified school district is of course authorized to prescribe courses of study for the students of the district and approve the textbooks and study materials necessary for those courses, K.S.A. 72-8205, and to hire the personnel necessary for the general government of the district. See K.S.A. 72-8202b; 72-8202c; 72-8202d; 72-8202e. The board of education may also: levy taxes on property within the district, see K.S.A. 72-8204a, 72-8209,

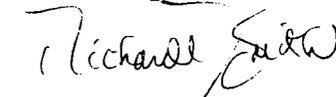
K.S.A. 1990 Supp. 72-8801; acquire and hold real and personal property, K.S.A. 72-8201 et seq.; issue and sell general obligation bonds, K.S.A. 72-8810; and develop and operate systems of public recreation, K.S.A. 1990 Supp. 12-1922 et seq.

Conversely, the duties of the county treasurer tend to be clerical in nature. The county treasurer is to receive all moneys belonging to the county, K.S.A. 19-506, and be the collector of taxes in the county, K.S.A. 19-515. The county treasurer must also keep a just and true account of the receipts and expenditures of the office, K.S.A. 19-507, and prepare financial statements and submit the statements to the proper officials. See K.S.A. 19-508a; 19-508b; 19-520; 19-524. Remaining duties of the county treasurer include: receiving and distributing revenues from the national wildlife refuge system, K.S.A. 19-506a; paying and redeeming county warrants, K.S.A. 19-509; endorsing county orders, K.S.A. 19-510; furnishing tax statements, K.S.A. 19-516; and publishing a statement of unpaid or partially unpaid delinquent personal property tax returns, K.S.A. 1990 Supp. 19-547.

The constituencies served by the two offices certainly may overlap; however, fulfillment of the duties and obligations of one office will not impair the individual's ability to fully serve the constituents of the remaining office. We acknowledge that, as county treasurer, the individual would be required to distribute funds to the school district and to submit reports to the board of education. K.S.A. 19-508b. While such an arrangement may prove rather awkward should the county treasurer delay in fulfilling such obligations, the individual would not be placed in a situation where he serves as his own supervisor. The common law doctrine of incompatibility of offices will not prohibit an individual from simultaneously serving as county treasurer and member of the board of education of a unified school district.

Very truly yours,


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