



STATE OF KANSAS

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December 3, 1991

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ATTORNEY GENERAL OPINION NO. 91-154

Rodney H. Symmonds
Lyon County Attorney
Courthouse
402 Commercial
Emporia, Kansas 66801

Re: Counties and County Officers -- County Attorney
--Holding Other Office

Synopsis: The county attorney is statutorily prohibited from holding the position of county zoning administrator as it is a county office. Cited herein: K.S.A. 19-705.

* * *

Dear Mr. Symmonds:

At Lyon county attorney you request whether K.S.A. 19-705 prohibits the county attorney from also serving as the county zoning director.

K.S.A. 19-705 states in pertinent part ". . . nor shall any county attorney while in office be eligible to or hold any judicial or other county office whatsoever."

Applying this statute to the facts given, we must first determine whether the zoning director is a county officer. One of the key attributes of public office is the right to exercise some definite portion of the sovereign power. Sowers v. Wells, 150 Kan. 630 (1989).

"Although an office is an employment, it does not follow that every employment is an office. An individual may be employed under a contract, express or implied, to do an act or perform a service without becoming an officer. But where the duties are continuing ones which are defined by government-prescribed rule and not by contract, and the government-appointed individual performs these duties without any contract defining them, if the duties continue even though the person performing them changes it is difficult to distinguish such employment from an office, or the person performing the duties from an officer." (Emphasis added.) Attorney General Opinion No. 86-174, 85-41 (citing 3 McQuillin, Municipal Corporations, § 12.30).

From the information you sent to us, the county zoning board passed regulations which were incorporated into a resolution that prescribed the duties of the zoning administrator. Since these duties are not person-specific and will continue even after the current zoning administrator resigns, we are of the opinion that such a position is a county office.

Therefore, in conclusion, we are of the opinion that the office of zoning administrator is a county office. Consequently, K.S.A. 19-705 would statutorily preclude the county attorney from holding the office of county zoning administrator.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma
Assistant Attorney General

RTS:JLM:MJS:bas