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ATTORNEY GENERAL OPINION NO. 92- 85

The Honorable Robert H. Miller
State Representative, Eightieth District
Route 1
Wellington, Kansas 67152

Re: Elections--Election Campaign Finance;
General--Membership on Kansas Commission on
Governmental Standards and Conduct; District Court
Judge

Constitution of the State of Kansas--Judicial--
Compensation of Justices and Judges; Certain
Limitation; Prohibition on Holding Other Offices

Synopsis: Article 3, section 13 of the Kansas constitution
precludes a sitting district court judge from being
a member of the Kansas commission on governmental
standards and conduct in the absence of any
provision of law specifically authorizing such
membership. Cited herein: K.S.A. 20-2201;
20-2301; 25-113; K.S.A. 1991 Supp. 25-4119a;
25-4119d; K.S.A. 46-215; 75-3223; Kan. Const.,
art. 3, § 13.

* * *

Dear Representative Miller:

You request our opinion regarding whether a Kansas district
court judge may legally serve as a member of the Kansas
commission on governmental standards and conduct. You state
that the judge you are considering for appointment meets the
qualifications set forth at K.S.A. 1991 Supp 25-4119d and that

a request has been submitted to the judicial ethics committee for a determination of whether this dual office holding is violative of judicial canons. Your question to us is whether there are other legal impediments to a sitting district court judge serving on the commission.

Article 3, section 13 of the Kansas constitution provides as follows:

"The justices of the supreme court and judges of the district courts shall receive for their services such compensation as may be provided by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state. Such justices or judges shall receive no fees or perquisites nor hold any other office of profit or trust under the authority of the state, or the United States except as may be provided by law, or practice law during their continuance in office." (Emphasis added).

Thus, the constitution creates an incompatibility between sitting as a district court judge and holding any other "office of profit or trust" except as may be authorized by law.

"The object sought to be accomplished by this provision, is that our high judicial [sic] officers may be removed as far as possible from the temptation to use the power and influence of their positions and authority for their own advancement. To prevent their minds from being distracted from their legitimate duties by ambitions hopes and struggles for preferment, to raise them above those political and partisan contests so unbecoming the desired purity, impartiality and calmness of the judicial character. Its effect is to prevent the acceptance of any other office by a judge or justice, the term of whose judicial office has not expired, and to render such acceptance void." State, ex rel., v. Cobb, 2 Kan. 32, 52 (1863). (Emphasis added).

According to this court, district court judges are precluded from holding any other office while still sitting on the court. We believe, however, that the phrases "office of profit or trust" and "except as may be provided by law" must be given due consideration.

Other jurisdictions have held that an "office of profit" is an office to which fees, salary or other compensation is attached. Moser v. Board of County Commissioners of Howard County, 201 A.2d 365, 367 (Md. 1964); Baker v. Board of Crook County Commissioners, 59 P. 797 (Wyo. 1900); Opinion of the Clerk, 386 So.2d 210, 212 (Ala. 1980). In State v. Monahan, 79 Kan. 492, 501 (1905) the Kansas Supreme Court stated that "[t]he words 'office of public trust' are equivalent to 'public office'." An office of trust or profit is one created by law and in which the occupant performs duties pursuant to statute. Holmes v. Osborn, 115 P.2d 775, 786 (Az. 1941).

The office of member of the Kansas commission on governmental standards and conduct is a public office created by statute. K.S.A. 1991 Supp. 25-4119a. Commission members receive compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223(a)-(d). K.S.A. 1991 Supp. 25-4119a. Commission members perform the statutory duties of administering and enforcing the campaign finance act, K.S.A. 1991 Supp. 25-4119a et seq., and the state governmental ethics laws, K.S.A. 46-215 et seq. We know of no provision specifically authorizing district court judges to serve on the commission. Compare K.S.A. 20-2201; 20-2301; 25-113. In our opinion, based on the case authorities cited above, membership on the Kansas commission on governmental standards and conduct is an office of profit or trust which a sitting district court judge is precluded from holding.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General