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ATTORNEY GENERAL OPINION NO. 2025-3

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Chief Legal Counsel for Southwest Medical Center

Nathanial Foreman
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1024 S. Trindle St – P.O. Box 909
Hugoton, KS 67951-0909
County Counselor for Seward County

Re: Counties and County Officers—Hospitals and Related Facilities—
Hospital Board

Synopsis: The common law doctrine of incompatibility of office precludes a person from concurrently holding the positions of a county hospital board member and a physician in the same hospital. Cited herein: K.S.A. 19-4605; 19-4610; Kan. Const., Art. 2, § 18.

* * *

Dear Ms. McQueen and Mr. Foreman:

As Chief Legal Counsel for Southwest Medical Center and County Counselor for Seward County, respectively, you request our opinion on whether an employee of a county hospital may simultaneously serve on that hospital's board of trustees.

Background

Southwest Medical Center (SWMC) is a hospital facility owned by Seward County, Kansas under K.S.A. 19-4601 et seq.¹ Once a county hospital has been created under this act, the entity managing hospital affairs is a board that is either elected by county voters or appointed by the county commissioners.² In the case of Seward County, the Board of County Commissioners appoints the members of the board.³ The Board of Trustees is authorized to adopt bylaws and rules and regulations for the management and control of the hospital; control the expenditures of hospital; enter into contracts for insurance and the employment of hospital administrators; obtain letters of credit; and establish and fund a pension fund for hospital employees.⁴ The SWMC Board of Trustees has exercised its authority and hired a chief executive officer responsible for the employees of SWMC.⁵

The SWMC Board of Trustees consists of seven members, one of whom is a physician.⁶ The physician was appointed to the Board of Trustees in 2022.⁷ The same physician became a salaried employee of SWMC in September 2024.⁸

Analysis

The Kansas Constitution empowers the Legislature to provide for the election and appointment of all public officers not otherwise provided for in the Constitution.⁹ If the Legislature provides for the election and appointment of a public officer, then that decision supersedes common law, which includes the doctrine of incompatibility of office.¹⁰ However, in the absence of a statute authorizing a person to hold more than one public office, Kansas courts apply the common law doctrine of incompatibility of office.¹¹

¹ Shirla McQueen and Nathanial Foreman, Correspondence, October 21, 2024.

² K.S.A. 19-4605.

³ Shirla McQueen and Nathanial Foreman, Correspondence, October 21, 2024.

⁴ K.S.A. 19-4610.

⁵ Shirla McQueen and Nathanial Foreman, Correspondence, October 21, 2024.

⁶ Shirla McQueen and Nathanial Foreman, Correspondence, October 21, 2024.

⁷ Shirla McQueen and Nathanial Foreman, Correspondence, October 21, 2024.

⁸ Shirla McQueen and Nathanial Foreman, Correspondence, October 21, 2024.

⁹ Kan. Const., Art. 2, § 18.

¹⁰ *Unified School District No. 501 v. Baker*, 269 Kan. 239, 243, 6 P.3d 848 (2000).

¹¹ K.S.A. 77-109; 269 Kan. at 252.

The common law doctrine of incompatibility of office prohibits an individual from holding two offices that are incompatible with each other as a matter of public policy.¹² “Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other.”¹³

The Kansas Supreme Court has held that the incompatibility of office doctrine applies to a person holding a public office and a position of public employment.¹⁴ “It is inimical to the public interest for one in public employment to be both the employer and the employee or the supervisor and the supervised.”¹⁵ “[T]wo offices or positions are incompatible if there are many potential conflicts of interest between the two, such as salary negotiations, supervision and control of duties, and obligations to the public to exercise independent judgment.”¹⁶

The Kansas Supreme Court in *Unified School District No. 501, Shawnee County v. Baker*¹⁷ found that the common law doctrine of incompatibility of office precludes a person from concurrently serving as a school board member and a teacher in the same school district. The Court noted that Baker occupied a position, a teacher, that was subordinate to her other position, a board member.¹⁸

There is no Kansas statute that expressly allows or prohibits a person to concurrently hold the positions of county hospital trustee and hospital employee.¹⁹ Accordingly, the common law doctrine of incompatibility of office applies to determine whether the concurrent holding of such offices is permissible.

In our judgment, the role of county hospital trustee and physician in the same hospital are incompatible. By assuming the role of physician and trustee, the individual occupies one position that is subordinate to the other. In his capacity as trustee, the physician sits on a body charged with managing the hospital where he is employed. The chief executive officer responsible for the physician’s employment answers to the same physician as a trustee. There are too many potential conflicts of interest between the two positions, such as supervision, control of duties, and exercising independent judgment.

¹² 269 Kan. at 249.

¹³ *Dyche v. Davis*, 92 Kan. 971, 977, 142 P. 264 (1914).

¹⁴ *Baker*, 269 Kan. at 239 Syl. ¶ 4. This distinguishes *Eldridge v. Sierra View Local Hospital District*, 224 Cal. App. 3d 311, 273 Cal. Rptr. 654 (Ct. App. 1990), where the California Court of Appeal, Fifth Appellate District found that the doctrine of incompatibility of office did not apply to a nurse’s employment and position as a member of the local hospital district’s board of directors. *Id.* at 319. California case law restricts the application of the doctrine to two public offices and has no application when one of the positions is employment rather than a public office. *Id.*

¹⁵ 269 Kan. at 239, Syl. ¶ 6.

¹⁶ 63C Am. Jur. 2d Public Officers and Employees § 58.

¹⁷ 269 Kan. 239 (2000).

¹⁸ 269 Kan. at 251.

¹⁹ See, e.g., K.S.A. 19-4605.

No matter how well-intended, a county hospital trustee serving concurrently as a physician of the same hospital is colored by the conflict inherent in the two positions. Therefore, we opine that the positions of trustee and physician for SWMC are incompatible, and may not be held concurrently by the same person.

Sincerely,

/a/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Andrew J. Lohmann

Andrew J. Lohmann
Assistant Solicitor General