

MINUTES OF THE Senate COMMITTEE ON Elections

The meeting was called to order by Senator Ronald R. Hein at  
Chairperson

1:30 ~~xxx~~/p.m. on March 1, 1983 in room 522-S of the Capitol.

All members were present except:  
Senator Richard Gannon  
Senator Edward F. Reilly, Jr.

Committee staff present:  
Myrta Anderson, Legislative Research Dept.  
Arden Ensley, Revisor of Statutes' Office  
*Sharon Green, Committee Secretary*

Conferees appearing before the committee:  
Ms. Janet Williams, Kansas Public Disclosure Commission  
Ms. Jo Ann Klesath, Kansas Association of Public Employees

The Chairman called the meeting to order.

Ms. Janet Williams testified in favor of SB 378, explaining the different new sections of the bill. She also handed out Governmental Ethics Commission Opinions. (Attachment 1)

Questions were asked and a general discussion was held. Members of the Committee suggested that the language in Section 5 and Section 6 needed to be looked into further.

Ms. Janet Williams testified in favor of SB 379, and referred to the date changes in the bill. She also passed out two articles from the Kansas Public Disclosure Commission relating to this measure. (Attachment 2) and (Attachment 3)

The Chairman appointed a sub-committee to study SB 378 and SB 379 and report to the Committee on March 7. Senator Meyers was appointed Chairman of the sub-committee, with Senator Hein and Senator Johnston.

Mrs. Jo Ann Klesath testified in favor of SB 379, stating that some state employees feel discriminated against by having to file statements of substantial interest while some faculty members are exempted.

The Chairman adjourned the meeting.

Opinion No. 75-63

Written May 8, 1975 to Dr. Harold J. Mandl, Clinical Psychologist, Mandl, Powell & Associates, 3127 Huntoon, Topeka, Kansas 66604.

This opinion is in response to your letter of April 2, 1975 in which you request an opinion from the Governmental Ethics Commission concerning K.S.A. 1974 Supp. 46-215 et seq.

We understand you request this opinion on behalf of Mandl, Powell and Associates of Topeka, Kansas. You inform us that your organization provides psychological and social work services for individuals, couples and families; and consultation and training services to businesses, social agencies and caregivers.

Pursuant to these purposes, you employ on a part-time basis a psychologist and psychiatrist who are state officers or employees employed at the Topeka State Hospital. We understand that these individuals do not participate on behalf of the state in the making of contracts with your organization. In addition, you inform us that their work for your organization is provided outside of their time commitments to the Topeka State Hospital.

Based on this factual situation, we understand you to ask whether K.S.A. 1974 Supp. 46-215 et seq. prohibits the above described state officers or employees from also receiving compensation from your organization for services rendered to it or its clients.

The Commission has reviewed the Act in its entirety and it is our opinion based on the factual situation presented to us that the Act does not prohibit the above described state officers or employees from also receiving compensation from your organization for services rendered to it or its clients. We note, however, that if the provisions of K.S.A. 1974 Supp. 46-248 which concerns the filing of Statements of Substantial Interests are otherwise applicable to such state officers or employees, the receipt of compensation from your organization must be properly reported by them.

If you have any questions concerning these reporting requirements, feel free to contact our staff for guidance.

Written June 9, 1975 to Senator Jim Parrish, Attorney at Law, 909 Topeka Avenue, Suite B, Topeka, Kansas 66612.

This opinion is in response to your letter of May 16, 1975 in which you request an opinion from the Governmental Ethics Commission concerning K.S.A. 1974 Supp. 46-215 et seq.

We understand you request this opinion in your capacity as a state senator. You inform us that you anticipate entering in to a contract with the State of Kansas through the Attorney General's Office in your capacity as a private attorney. The purpose of the contract is to employ you as an assistant attorney general for the purpose of collecting past due accounts which the Kansas University Medical Center has been unable to collect. You also inform us that your fee for such collections would amount to 33 1/3% of amounts collected without lawsuit and 50% of those amounts collected by suit. The legal work necessary to collect such past due accounts is distributed to several attorneys throughout the States of Kansas and Missouri; such that your gross income therefrom should not exceed \$4,000 per year.

Based on this factual situation, we understand you to ask the following two questions:

1. Does K.S.A 1974 Supp. 46-215 et seq. prohibit you from contracting with the State to provide services to it?
2. Does the Act otherwise place any restrictions on the contractual relationship described above?

K.S.A. 1974 Supp. 46-233 is applicable to your first question. That section states, in pertinent part, "(a) No state officer or employee shall in his capacity as such officer or employee participate in the making of a contract with any person or business by which he is employed or in whose business he has a substantial interest, and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. . . ."

The prohibition contained in this section regarding participating in the making of contracts is applicable only when the state officer or employee is "acting in his capacity as such officer or employee". Thus, so long as you do not actively participate in your role as a state senator on behalf of the state in regard to the making of the contract between the state and yourself as a private attorney, this section would be inapplicable. In other words, you may contract with the State of Kansas in your role as a private attorney so long as you do not at the same time participate in the making of the contract on behalf of the state in your capacity as a state officer or employee. As we understand the factual situation, since the Attorney General's Office is acting on behalf of the state as its contracting agent, it appears to us that the prohibitions contained in this section are inapplicable and no inference of wrongdoing should arise under this section in regard to the contract you have described.

We now turn to the second question where it is asked whether the Act otherwise places any restrictions on the contractual relationship you have described. In this regard, the Commission notes that the definition of "representation case" set out in K.S.A. 1974 Supp. 46-226 is inapplicable to this situation. Thus, one need not, as a general rule, file a representation case disclosure form under K.S.A. 1974 Supp. 46-239 when any

action on behalf of the the state is initiated pursuant to the contract you have described. Since the transactions described above do not constitute "representation cases", the prohibition contained in K.S.A. 1974 Supp. 46-240 concerning contingent fees is inapplicable to this situation.

What we have just said concerning the lack of a requirement for filing representation case disclosure forms is limited in the somewhat unique factual situation you have described since you serve as a legislator. The Act places somewhat more stringent requirements in regard to such state officers or employees. Specifically, K.S.A. 1974 Supp. 46-233(b) states, "No individual shall, while a legislator or within one (1) year after the expiration of a term as legislator, be interested pecuniarily, either directly or indirectly, in any contract with the state, which contract is funded in whole or in part by any appropriation or is authorized by any law passed during such term, except that the prohibition of this subsection (b) shall not apply to any contract interest in relation to which a disclosure statement is filed as provided by section 25. . . ."

The applicability of this section and therefore the need to file a representation case disclosure form under it depends in this case on whether your contract is "funded in whole or in part by any appropriation or is authorized by any law" passed during your current term. It may well be that your fee is funded in this situation entirely by the proceeds that you recover such that it does not go through any appropriation process. In addition, it may be that no law was passed during your term which authorized the type of contract you have described. If these statements are correct, then you need not file a representation case disclosure form under this section. Whether the above statements are correct, however, requires a review of laws outside our jurisdiction such that we cannot provide you with a definitive answer on the issue of whether you must file a representation case disclosure form under this section.

In closing, except as limited herein, it is our opinion, based on the facts as presented to us, that the Act does not otherwise place any restrictions on the contractual situation you have described.

Opinion No. 75-81  
(Amends Opinion No. 75-68)

Written July 10, 1975 TO ALL INTERESTED PERSONS:

The Governmental Ethics Commission, pursuant to K.S.A. 1974 Supp. 46-254, as amended, takes this opportunity to review Opinion No. 75-68 issued on June 9, 1975 to Senator Jim Parrish.

In Opinion No. 75-68 the issue was raised as to whether a state legislator who was contemplating contracting with the State of Kansas to perform legal services for the state must file a Representation Case Disclosure Statement. In that opinion we noted that K.S.A. 1974 Supp. 46-233(b) would require such filings if certain circumstances were present.

In this regard we were informed that Senator Parrish elected to file the form even though our opinion did not directly require it. Since the form has been filed, we issue this opinion only to clarify that another section of the Act which we did not discuss in Opinion No. 75-68 would have required the filing of the Representation Case Disclosure Statement on the facts presented in Opinion No. 75-68. Specifically, K.S.A. 1974 Supp. 46-239(b) states, in pertinent part, "... Any individual, while a legislator or within one (1) year after the expiration of a term as a legislator, who contracts to perform any service for a state agency other than the legislature, shall not later than ten (10) days after the acceptance of such contract, file a disclosure statement as provided in this section...."

It is our opinion from a review of this language that on the facts presented in Opinion No. 75-68, the Act required the filing of a Representation Case Disclosure Statement. As thus modified, Opinion No. 75-68 is reaffirmed.

Written on November 19, 1975 to Dr. Harold J. Mandl, Clinical Psychologist, Mandl, Powell & Associates, 3127 Huntoon, Topeka 66604.

This opinion is in response to your letter of October 8, 1975, in which you request an opinion from the Governmental Ethics Commission. We note at the outset that the Commission's jurisdiction and therefore this opinion is limited in this case to the applicability of K.S.A. 1974 Supp. 46-215 et seq., as amended. Thus, whether some other common law, statutory system or agency guidelines relate to your question is not covered by this opinion.

We understand you request this opinion on behalf of Mandl, Powell and Associates and a psychiatrist who is a state officer and employee. The psychiatrist provides part-time services to Mandl, Powell and Associates (see Opinion No. 75-63).

You inform us of two factual situations of concern to you in regard to the practice of the psychiatrist on a limited basis with your firm. Both situations arise from the requirements of federal law that a physician supervise and endorse the claim forms and therefore receive payment for the services your firm provides to welfare clients. In other words, when you receive payment from the state for services to welfare clients the check is made out to the psychiatrist who in turn endorses it to the firm.

In the first factual situation you note that the vast majority of such clients are not referred to your firm by the psychiatrist or in those limited cases where they are referred, the psychiatrist does not know whether the individuals are or will become welfare clients. In the second situation you note that occasionally the psychiatrist might refer welfare clients to your firm which clients were originally met by the psychiatrist in his role as a state officer or employee. You inform us in this situation that the psychiatrist refers such clients to a variety of service providers and your firm receives only a few such referrals.

We also understand that the psychiatrist received substantially less than a thousand dollars in the preceding calendar year from your firm and it would appear he is an independent contractor as opposed to an employee of the firm. In addition, the psychiatrist's reimbursement from your firm is based primarily on an hourly basis for consultation on a wide range of cases. Thus, his compensation is not directly related to those specific cases referred by him. Finally, you inform us that pending the outcome of your request for an opinion, you are holding checks thus received from the state.

Based on these factual situations we understand you to ask the following questions:

1. In those situations where the welfare client is not referred to your firm by the psychiatrist, or if referred he is unaware that the individual is or will become a welfare client, does the Act prohibit him from receiving checks and endorsing them to your firm while at the same time he serves as a state officer or employee?
2. In those situations where the psychiatrist knows that the referred individual is a welfare client, does the Act prohibit the psychiatrist from making the referral and receiving and endorsing checks to your firm while at the same time he serves as a state officer or employee?

In regard to your first question, the Commission has reviewed the Act in its entirety and it is our opinion under the facts of that question that nothing therein prohibits the psychiatrist from receiving and endorsing checks to your firm for welfare clients while at the same time serving as a state officer or employee.

Turning to the second question, we refer you to K.S.A. 1974 Supp. 46-233(a) which states in pertinent part, "No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest, and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business."

The Commission has dealt with this language and the difficult interpretive problems contained in it on numerous occasions. Your question, however, raises two interpretive problems which have not been previously considered. The first of these is whether the psychiatrist is "employed" by your firm as that phrase is used in the statute or whether a distinction exists on the theory that he is in effect an independent contractor. The second issue is whether the section applies to the situation where the participation in making the contract does not relate to the agency in which the state officer or employee serves. These are both difficult questions which may have broad application to other factual situations.

Thus, the Commission does not wish to definitively discuss them unless necessary for the resolution of future conduct. We, therefore, believe it is acceptable to cash those checks already received under the second factual situation, but believe such transactions should be avoided in the future.

Opinion No. 77-10

Written on April 20, 1977 to Mr. Ted Hollembeak, Perkins, Guy & Rulon, Chartered, 401 Citizens Bank Building, Emporia, Kansas 66801.

This opinion is in response to your letter of January 25, 1977 in which you request an opinion from the Governmental Ethics Commission concerning K.S.A. 1976 Supp. 46-215 et seq. We note at the outset that the Commission's jurisdiction is limited in this case to the cited statutory section. Thus, whether federal law or rules and regulations or other state law or rules and regulations apply to your question is not covered by this opinion.

We understand you request this opinion on behalf of a half-time employee of Social and Rehabilitative Services who works as an adult service supervisor. You inform us that your client is a licensed specialist clinical social worker and is considering accepting employment on a part-time basis as a consultant for nursing homes.

Based on this factual situation, you ask whether simultaneous employment with the state and nursing homes would violate any portion of K.S.A. 1976 Supp. 46-215 et seq.

A number of sections of the Act might apply to the situation you have described. We believe you should specifically review the following: K.S.A. 1976 Supp. 46-226, 46-233, 46-235, 46-238 and 46-241.

For the purposes of this opinion, however, and based primarily on the information you have provided us, we shall assume that your client does not make or participate in the making of contracts on behalf of the state, and has not for the preceding two years, with the nursing homes with which she intends to consult and would not be divulging any confidential information to the nursing homes. We also assume that the wages or fees to be received from the nursing homes would be solely related to services provided for them for social work consultation and would be reasonable in amount.

Based on these assumptions, and a continuation of the factual basis on which the assumptions are made as well as a continuation of the law which is currently in effect, it is our opinion that K.S.A. 1976 Supp. 46-215 et seq. would, as a general rule, not be violated when your client obtains simultaneous employment with the state and the nursing homes.

Written April 19, 1978 to Ms. Ann Victoria Thomas, Administrative Assistant, Office of the General Counsel, University of Kansas, 233 Strong Hall, Lawrence 66045

This opinion is in response to your letter of January 10, 1978, in which you request an opinion from the Governmental Ethics Commission.

We note at the outset that the commission's jurisdiction is limited in this case to the applicability of K.S.A. 46-215 *et seq.* Thus, whether some other common law, statutory system or administrative policy applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as Administrative Assistant to the General Counsel of the University of Kansas on behalf of the Director of the University Architectural Services Office. You inform us that the architectural office routinely specifies products for university remodeling projects. One such product is lighting fixtures. These are specified by an employee on the director's staff. In accord with state regulations every product specified is qualified by "or approved equal."

We are informed that the actual purchase decisions, based on the architectural office's specifications, take generally three forms. (1) Major purchase decisions are let after competitive bidding as provided by law. (2) In most non-bid situations purchase decisions are approved by the state director of purchasing. (3) In the case of purchases by the Endowment Association the University Architectural Services Office approves the actual product prior to purchase.

You also inform us that the director is concerned about a possible conflicts of interest question because his wife has recently become the manager of the largest light fixture outlet in Lawrence. While she does not own the business, she does anticipate deriving more than \$1,000 in annual taxable income from this position.

Based on this factual situation we understand you to ask whether it would constitute a conflict of interest under K.S.A. 46-215 *et seq.* for purchases to be made from the wife's employer of goods specified by the University Architectural Services Office while the husband is director thereof.

We note that by definition of K.S.A. 46-229(b) the husband is deemed to hold a "substantial interest" in the lighting fixture outlet due to his wife's income therefrom. With this determination made, the issue turns on the applicability of K.S.A. 46-233 to the described situation.

K.S.A. 46-233 states in pertinent part, "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer

or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.

"Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee."

"(d) Subsection (a) and (b) shall not apply to the following:  
(1) Contracts let after competitive bidding has been advertised for by published notice; and  
(2) Contracts for property or services for which the price or rate is fixed by law."

We first direct your attention to subsection (d) of K.S.A. 46-233. From a review of this section it is our opinion that, in those situations where competitive bids are let, this section does not apply, and there is no conflict of interest under the factual situation provided to us.

The situations where competitive bidding is not involved are more complicated. The above section does not preclude an agency from contracting with a business in which a member of the agency holds a "substantial interest." Rather the section requires the member of the agency to abstain from any action in his or her capacity as a state employee. Given the position of the employee in this case would be extremely difficult for him to abstain from preparation of the specifications. do so he would have to remove himself from the oversight function of viewing his subordinate's work. This he could not do since he owes that duty to the state as a director of a state agency. Because of this duty to the state, we believe he must inevitably be deemed to participate in the making of specifications.

The question then turns to whether the participation in the making of specifications, constitutes "participating in the making of the contract" of purchase by the state.

On this issue, while we recognize the possible hardship in this particular case, we can only believe that the drafting of specifications does play an integral part in the making of state contracts. Thus, it is our opinion that the wife's firm would be precluded from contracting with the state on a non-bid basis under the factual situation presented to us.

Opinion No. 78-19

Written April 20, 1978 to Mr. Mark S. Wunder, 920½ West Fourth, Pratt 67124

This opinion is in response to your letter of January 21, 1978 in which you request an opinion from the Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction in this case is limited to the applicability of K.S.A. 46-215 et seq. Thus, whether some other common law, statutory system or administrative policy relates to your question is not covered by this opinion.

We understand you request this opinion in your capacity as a licensed social worker for the Kansas State Department of Social and Rehabilitation Services as an income maintenance worker. You inform us that it is not a part of your official duties to recommend nursing home placements and we assume from the tenor of your letter that it is not a function of your official duties as a state employee to review nursing home social plans for their residents.

You also inform us that you have recently been contacted by a nursing home to serve as the home's consultant social worker for

reviewing that home's social plans for its residents. Your pay would be \$200 per year and you would work only on Saturday, approximately once every three months.

Based on this factual situation, we understand you to ask whether the private consulting you have described would constitute a conflict under K.S.A. 46-215 et seq. during your employment as a state employee.

Two sections of the Act which you should review are K.S.A. 46-235 and 46-236. As we understand the factual situation, those sections do not apply but we believe you should review them in case they raise further issues concerning the situation you have described.

The only other section of the Act which appears to apply to the situation you have described is K.S.A. 46-233, which states in pertinent part, "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee."

From a review of this section, it is our opinion that if you have participated as a state employee in the making of any contract with the nursing home except those let after competitive bidding or for which the rate is fixed by law, then you could not accept employment with the nursing home. Otherwise, it is our opinion based on the factual situation provided to us, that K.S.A. 46-215 et seq. does not preclude you from being a private consultant to a nursing home during your employment as a state employee.



Opinion No. 78-20

Written April 19, 1978 to Ms. Vickie Scarbrough, 912 Elm, Medicine Lodge 67104

This opinion is in response to your letter of March 9, 1978, in which you request an opinion from the Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction in this case is limited to the applicability of K.S.A. 1977 Supp. 46-215 et seq. Thus, whether some other common law, statutory system or administrative policy relates to your question is not covered by this opinion.

We understand you request this opinion in your capacity as a state employee serving in the position of a Protective Service Worker in the Pratt Area Social and Rehabilitation Services Office. You inform us that you have recently been offered a part-time job by a rest home to complete social assessments on their residents. We assume for the purposes of this opinion that it is not a function of your duties with the state to review nursing home social assessments and that the time devoted to the private contract would not interfere in any manner with your state duties.

Based on this factual situation, we understand you to ask whether the private consulting you have described would constitute a conflict under K.S.A. 46-215 et seq. during your employment as a state employee.

Two sections of the Act which you should review are K.S.A. 46-235 and 46-236. As we understand the factual situation, those sections do not apply but we believe you should review them in case they raise further issues concerning the situation you have described.

The only other section of the Act which appears to apply to the situation you have described is K.S.A. 46-233, which states in pertinent part, "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee."

From a review of this section, it is our opinion that if you have participated as a state employee in the making of any contract with the nursing home except those let after competitive bidding or for which the rate is fixed by law, then you could not accept employment with the nursing home. Otherwise, it is our opinion based on the factual situation provided to us, that K.S.A. 46-215 et seq. does not preclude you from being a private consultant to a nursing home during your employment as a state employee.

Written September 20, 1978 to Mr. Dwayne Sackman, Budget Analyst,  
Division of the Budget, Department of Administration, State Capitol,  
Room 152-2, Topeka, Kansas 66612.

This opinion is in response to your letter of September 8, 1978, in which you request an opinion from the Governmental Ethics Commission concerning K.S.A. 46-215 et seq. We note at the outset that the Commission's jurisdiction in this matter is limited to the above sections and K.S.A. 75-4301 et seq. which is not applicable here. Thus, whether some other statutory or common law systems outside of our jurisdiction apply to your question is not covered by this opinion.

We understand you to request this opinion in your capacity as a budget analyst in the Kansas Department of Administration. Prior to commencing service in that capacity on September 1, 1978, you served as an administrative officer at the Kansas Bureau of Investigation.

During your tenure there, you were the project monitor for several contracts between the state and Systems Consultants, Inc. (S.C.I.). You inform us that all such contracts were let after competitive bidding following standard Department of Administration procedures including publicity of notice.

You also inform us that just prior to your change in positions with the state you had been asked by S.C.I. to serve as a consultant on a project on which the firm is bidding. The project is a comparative study concerning the consolidation of law enforcement services in Riley County and the Riley County Police Department is the contracting agency.

The project is being financed by a grant from the Law Enforcement Assistance Administration and is being competitively bid following both state and federal guidelines. Your role, should S.C.I. get the contract, would be the gathering and analyzing of data and you would be associated with S.C.I. by contract and paid on a flat daily basis plus expenses.

We are informed that you would do this work on weekends, in the evenings, on vacation days and that time which should be devoted to your service as a state employee will not be diverted to your contract with S.C.I. (Please review K.S.A. 46-235 on the issues raised by this factual statement.) In addition, we assume that your compensation will be reasonable in light of what other persons doing similar work would charge and that no confidential information will be used. (In regard to these assumptions please review K.S.A. 46-238 and 46-241.)

Based on this factual situation we understand you to ask whether you may contract with S.C.I. to provide services to it during your tenure as a state employee when at one time you may have participated on behalf of the state in making contracts with S.C.I.

K.S.A. 46-233 appears to be the only section of the Act which might apply to the factual situation as we understand it. That section states: "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee. . . . (d) Subsections (a) and (b) shall not apply to the following: (1) Contracts let after competitive bidding has been advertised for by published notice; "emphasis added" and (2) Contracts for property or services for which the price or rate is fixed by law."

As we understand the factual situation the contracts between the KBI and S.C.I. were duly let after competitive bidding had been advertised for by published notice. Thus, the prohibition contained in K.S.A. 46-233(a) is not applicable to this situation. Finding no other prohibitions applicable to the factual situation described to us, it is our opinion that you may contract to provide services to S.C.I. during your tenure as a state employee. You should, however, review the disclosure of substantial interest requirements in K.S.A. 46-247 and 46-248 concerning the disclosure of your contract when filing your next disclosure statement.

Opinion No. 79-16

Written May 16, 1979, to Mrs. Anne Bradford, 910 West New Hampshire, Box 100, Osborne, Kansas 67473.

This opinion is in response to your letter of April 11, 1979, in which you request an opinion from the Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction in this case is limited to the applicability of K.S.A. 46-215 et seq. Thus, whether some other common law, statutory system or administrative policy relates to your question is not covered by this opinion.

We understand you request this opinion in your capacity as a state employee serving in the position of a Child, Youth, Family Service, Adult & Blind Service worker with the Department of Social and Rehabilitation Services. You inform us that you have recently been offered a part-time job by a nursing home to complete social assessments on their residents. We understand that it is not a function of your duties with the state to review nursing home social assessments nor to recommend nursing home placements, and that the time devoted to the private contract would not interfere in any manner with your state duties.

Based on this factual situation, we understand you to ask whether the private consulting you have described would constitute a conflict under K.S.A. 46-215 et seq. during your employment as a state employee.

Two sections of the Act which you should review are K.S.A. 46-235 and 46-236. As we understand the factual situation, those sections do not apply but we believe you should review them in case they raise further issues concerning the situation you have described.

The only other section of the Act which appears to apply to the situation you have described is K.S.A. 46-233, which states in pertinent part, "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee."

From a review of this section, it is our opinion that if you have participated as a state employee in the making of any contract with the nursing home except those let after competitive bidding or for which the rate is fixed by law, then you could not accept employment with the nursing home. Otherwise, it is our opinion based on the factual situation provided to us, that K.S.A. 46-215 et seq. does not preclude you from being a private consultant to a nursing home during your employment as a state employee.

Opinion No. 79-21

Written July 18, 1979 to Ron Smith, Assistant to the Secretary of Administration, Department of Administration, Capitol Building, Room 263-E, Topeka, Kansas 66612.

This opinion is in response to your letter of June 11, 1979, in which you request an opinion from the Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction in this matter is limited to the applicability of K.S.A. 46-215 et seq. and K.S.A. 75-4301 et seq., the latter of which does not apply. Thus, whether some other statutory, common law, or regulatory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as the Assistant to the Secretary of Administration. You note that you would also like to serve as general counsel to a family corporation which may become involved in doing business with the state of Kansas.

Based on this factual situation you ask the following three questions:

- 1) Since your state job involves administration of the Division of Purchasing, and if the Corporation does receive a request to fill an order from a state college which is processed through the Division of Purchasing, is there a conflict of interest?
- 2) If you communicate with the Division of Purchasing in any manner on behalf of the corporation, is that a conflict of interest? If not, under what circumstances does the Commission feel a conflict might develop?
- 3) What guidelines does the Commission recommend concerning your involvement with this corporation? Do we foresee any instances where we advise you not to become involved? If such instances can be identified, can the corporation substitute its required representation with someone else who is an officer of the corporation (and an immediate family member of yours) and such action would not be construed as a conflict?

K.S.A. 46-233 is applicable to your questions. That section states: "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.

Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee . . . .

(d) Subsections (a) and (b) shall not apply to the following: (1) Contracts let after competitive bidding has been advertised for by published notice; and (2) Contracts for property or services for which the price or rate is fixed by law."

In applying this section to your questions, we first note that the threshold question will be whether you hold a "substantial interest" in the family corporation. We would direct you to K.S.A. 46-224 for a review of that issue and assume for the purposes of rendering this opinion that the definition will apply.

The language of K.S.A. 46-233(a) does not prohibit a business in which a state employee holds a substantial interest from doing business with the state. Rather, the section is directed at requiring the state employee from not participating in any manner in his capacity as such in the making of such contracts. Thus, in response to your questions, it is our opinion that you may not under any circumstances participate in your capacity as a state employee in the making of contracts between the family corporation and the state unless the contracts are let after competitive bidding has been advertised for by published notice, or the contracts are for property or services for which the price or rate is fixed by law.

In regard to not participating in those contracts which are not exempted by K.S.A. 46-233(d), we direct your attention to Opinion No. 78-13 as it may relate to your role as having supervisory capacity over other state employees. We held there that there are some circumstances in which, due to one's capacity, it may be impossible to refrain from participation in one's official capacity. This would depend on the facts of each case and, should such a situation arise, we would suggest you contact our staff for guidance.

Except as we will note below, we believe the above paragraph answers the bulk of the issues raised by your questions concerning your capacity as a state employee. We turn, therefore, to those portions of your questions which deal with you acting in your capacity as a representative of the family business and communicating with the Division of Purchasing. Here again, under the language of K.S.A. 46-233, you may do so as long as you do not participate in the same matter in your capacity as a state employee as described above.

We would like here to add a word of caution. K.S.A. 46-241 prohibits the use of confidential information acquired in the course of one's official duties to further one's own or another's economic interest. This is true regardless of whether a contract is let after bidding or has a fixed price. Furthermore, we would direct your attention to such common law theories as are outside of our jurisdiction concerning the delicate problem of agency involved in having two principals concerning the same contractual situations.

Opinion No. 79-22

Written July 13, 1979 to King David Anderson, R.R. #1 DeSoto, DeSoto, Kansas 66018.

This opinion is in response to your letter of July 6, 1979 in which you request an opinion from the Governmental Ethics Commission concerning K.S.A. 46-215 et seq.

We note at the outset that the Commission's jurisdiction in this matter is limited to the applicability of K.S.A. 46-215 et seq., and K.S.A. 75-4301 et seq., the latter of which does not apply. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as a Civil Engineer employed by the Kansas Department of Transportation. You advise us that your job duties are centered around the design and engineering of bridge highway projects. A typical project would consist of designing a new bridge to replace or repair a structurally deficient or deteriorated bridge for the Kansas highway system. You are not, however, involved in the administrative process of project selection or in the bidding process.

You state that you are in the process of starting a bridge construction company and ask our opinion concerning possible conflicts of interest in bidding state or county projects while at the same time being employed with the state as described above.

K.S.A. 46-233 is applicable to your question. That section states: "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.

Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee....

(d) Subsections (a) and (b) shall not apply to the following:  
(1) Contracts let after competitive bidding has been advertised for by published notice; and  
(2) Contracts for property or services for which the price or rate is fixed by law."

From a review of subsection (d) of the above section, we conclude in those situations involving competitive bidding that the prohibitions contained in K.S.A. 46-233(a) do not apply under the factual situation provided

to us. Thus, it is our opinion subject to the limitations mentioned below that it does not constitute a conflict of interest for you to participate as a state employee in the design and engineering of bridges and also seek bids from the state or county involving those projects if the project is let after competitive bidding procedures.

What we have just said relates only to competitive bidding situations or situations where the price or rate is fixed by law. For other situations we direct you to Opinion No. 78-13 a copy of which is enclosed. We also note that K.S.A. 46-241 prohibits the use of confidential information acquired in the course of one's official duties to further one's own economic interest. This is true whether the contract is let after competitive bids or not. If you have any questions concerning this last paragraph, don't hesitate to contact our staff for further guidance.

Opinion No. 80-11

Written April 16, 1980 to Mr. Arvind M. Shah, 3334 Oakley Street, Topeka, Kansas 66614.

This opinion is in response to your letter of March 19, 1980, in which you request an opinion from the Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction in this matter is limited to the application of K.S.A. 1979 Supp. 46-215 et seq. and K.S.A. 75-4301 et seq., the latter of which does not apply. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as an engineer employed with the State Department of Transportation. You advise us that your major duties relate to the preparation of bridge projects. We also understand you to be interested in offering your services in your free time as a consulting engineer to subcontractors on grants let or approved by other state agencies.

Based on this factual situation, we understand you to ask whether there is a conflict of interest in your seeking employment outside of state hours with subcontractors whose contract was obtained or let with state approval.

As we understand the factual situation, you are not involved in your capacity as a state official in the contractual settings on which you would like to serve as a consultant. Under such circumstances and so long as the consultant work does not interfere with time devoted to state duties, it is our opinion that the situation you describe does not constitute a conflict under K.S.A. 1979 Supp. 46-215 et seq. Please keep in mind the confidentiality requirements of K.S.A. 46-241, and if you have any additional questions, do not hesitate to contact us for guidance.

Opinion No. 80-20

Written July 16, 1980 to Mrs. Florde Pettis, SRS Area Director, P. O. Box 1027, Junction City, Kansas 66441.

This opinion is in response to your letter of November 7, 1979, which was directed to Dr. Robert Harder and conveyed to this office by letter of Charles V. Hamm, dated May 2, 1980.

We note at the outset that the Commission's jurisdiction in this matter is limited to the application of K.S.A. 75-4301 et seq. and K.S.A. 46-215 et seq., the former of which does not apply here. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as an area director for the State Department of Social and Rehabilitation Services. You advise us that you have been approached by the North Central Guidance Board and also the Pawnee Comprehensive Mental Health governing board concerning service on their board of directors. Both of these entities have had contractual relationships with SRS during your tenure as area director. You indicate you will not receive compensation from either entity for service on their boards.

Based on this factual situation, we understand you to ask whether you may serve on the board of directors of the North Central Guidance Center and the Pawnee Comprehensive Mental Health board during your tenure as area director for SRS while that agency has contracts with those entities.

K.S.A. 46-233 may be applicable to your question. That section states: "Contracts involving state officer or employee or legislator; prohibited acts, exceptions; challenging constitutionality of legislative action or enactment, by legislator; prohibited acts. (a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee. (b) No individual shall, while a legislator or within one (1) year after the expiration of a term as legislator, be interested pecuniarily, either directly or indirectly, in any contract with the state, which contract is funded in whole or in part by any appropriation or is authorized by any law passed during such term, except that the prohibition of this subsection (b) shall not apply to any contract interest in relation to which a disclosure statement is filed as provided by K.S.A. 1975 Supp. 46-239. (c) No individual, while a legislator or within one (1) year after the expiration

of a term as a legislator, shall as a litigant or by representing any person in a court proceeding attach any legislative action taken or enactment made during any term such individual served as a legislator as being unconstitutional because of error in the legislative process with respect to such action or enactment. (d) Subsections (a) and (b) shall not apply to the following: (1) Contracts let after competitive bidding has been advertised for by published notice; and (2) Contracts for property or services for which the price or rate is fixed by law."

The initial question in determining the applicability of this section is whether the two entities constitute "persons" or "businesses" in which you hold a "substantial interest." From a review of the definition of "person" contained in K.S.A. 46-223, it is our opinion that the entities constitute "persons" under the Act. However, since you will not receive compensation from these entities and hold no ownership interest, and we assume will not receive gifts or honoraria in excess of \$500.00 from either entity, it is our opinion that in so far as the definition of "substantial interest" is applied to a "person" you do not hold such an interest in either entity. (See K.S.A. 46-223)

The issue turns therefore to whether either entity constitutes a "business". This issue is important since under K.S.A. 46-229(d) the holding of the position of an officer in a business constitutes a "substantial interest" therein, regardless of whether compensation is received.

"Business" is defined in K.S.A. 46-230 as follows: "'Business" means any corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income."

As we understand the factual situation, the two entities are established pursuant to K.S.A. 19-4001 et seq. Pursuant to K.S.A. 19-4002(c), membership of each governing board is mandated to include, as nearly as possible, the judiciary, public welfare, hospitals, mental health organizations, and mental retardation organizations, as well as education, rehabilitation, labor, business, and civic groups and the general public. In addition, the entities are basically quasi-governmental agencies supported by tax dollars and are not organized for profit. It is, therefore, our opinion, based on the specific language of K.S.A. 19-4001 et seq. which would indicate a preference for appointments of this nature and the nature of the specific entities involved, that neither entity constitutes a "business" under K.S.A. 46-230.

In sum, it is our opinion that you would not hold a "substantial interest" in either entity by serving on their board of directors under the appropriate statutory definitions. Thus, it is our opinion that you may serve on those boards during your tenure as an area director for SRS and while SRS has contractual relationships with those entities.

Opinion No. 80-25

Written August 20, 1980, to Tim Danahy, R. R. #1, Box 48A, Viola, Kansas 67149.

This opinion is in response to your letter of 7-26-80 in which you request an opinion from the Kansas Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction in this case is limited to the application of K.S.A. 25-4101 et seq., 46-215 et seq. and 75-4301 et seq. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as a Revenue Field Representative serving Harper and Sumner counties for the Kansas Department of Revenue. You advise us that you are interested in attempting to form a rural water district in the area of your residence. In order to achieve this goal, you are considering running for one or both of the elective positions of the Alton Township Board or the Board of Directors of Miles Village-Lake Waltanna Improvement District. As we understand the factual situation, neither of these elective positions are compensated, but both may influence expenditures of tax dollars.

Based on this factual situation, we understand you to ask whether election to either post during your service as a state employee constitutes a conflict of interest.

We have reviewed the three bodies of law within our jurisdiction and find no conflict which precludes you from seeking the elective positions you mention during your service as a state employee. We would, however, suggest that you review K.S.A. 46-233 and 46-241 to the extent these sections might require you to abstain from certain actions which present a conflict between your position of employment and any elected office you might hold.



Written August 20, 1980 to Mr. James R. Rowe, 3539 W. 35th Terrace, Topeka, Kansas 66614.

This opinion is in response to your letter of August 6, 1980, in which you request an opinion from the Kansas Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction in this matter is limited to the application of K.S.A. 46-215 *et seq.* and K.S.A. 75-4301 *et seq.*, the latter of which does not apply here. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as an Accountant II with the Kansas Department of Human Resources and that you have held that position since November 26, 1979. Prior to that time you were employed by the State as either an Auditor I or II in the Medical Audit Section of the Kansas Department of Social and Rehabilitation Services. In this prior capacity, it was your responsibility to audit financial statements and transactions reported by medical providers to determine their validity. You advise us that you were at no time a representative of SRS involved in the negotiation or execution of provider agreements with health care providers as this was handled by a different section in SRS.

You also advise us that you have been contacted by a health care provider whose accounts you audited in your former position to see if you would be interested in serving as their accountant on a part-time basis while retaining your full-time employment with the State in your newer position. Should you accept the offer, you would keep records for the health care provider which would have a direct bearing on the reimbursement rate paid to the provider by the State. You advise that your current position with the State is not at all involved in aspects or contracts between the State and the health care provider involved.

Based on this factual situation, we understand you to ask whether you may accept part-time employment with the health care provider during your tenure as a State employee.

K.S.A. 46-233 might apply to the situation you have described. That section states: "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business; such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee. (d) Subsections (a) and (b) shall not apply to the following: (1) Contracts let after competitive bidding has been advertised for by published notice; and (2) Contracts for property or services for which the price or rate is fixed by law."

The question presented in reviewing this language is whether your auditing of the health care provider's accounts constituted participating in the making of a contract with the provider such that you are now precluded from accepting employment with them. In Opinion No. 78-30, the Commission voiced its view on what was required to fall with the "participation" language. As we understand this factual situation, you were not involved on behalf of the State in discretionary decisions concerning any contracts with the State and it is, therefore, our opinion under the applicable test that your actions did not constitute "participation".

We have otherwise reviewed K.S.A. 46-215 *et seq.* and find no section which would preclude you from taking the part-time employment so long as it does not interfere with the time devoted to your State duties. You should, however, review K.S.A. 46-238 and 46-241 and be certain to comply with these sections.

Opinion No. 80-28

Written September 17, 1980 to J. Russell Mills, Superintendent, Osawatomie State Hospital, Osawatomie, Kansas 66064.

This opinion is in response to your letter of September 8, 1980, to the Secretary of State which was referred to this office for response in the form of a formal opinion.

We note at the outset that the Commission's jurisdiction in this matter is limited to K.S.A. 46-215 et seq. and K.S.A. 75-4301 et seq., the latter of which does not apply to your question. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as Superintendent of the Osawatomie State Hospital. You advise that you own a substantial interest in Holiday Manor, Inc., which operates a nursing home in the Osawatomie area and have duly filed a disclosure statement of that interest. In addition, you have recently become a board member of that corporation and have filed a supplemental statement disclosing that fact. You also state that you will not participate in the making of any contracts between the State and the corporation. In this regard, we understand that on occasion hospital patients will be referred to the State Department of Social and Rehabilitation Services for placement in nursing home care, but that the placement decision rests with S.R.S. and you have no personal input in those decisions.

Based on this factual situation you ask whether you are in compliance with the applicable conflict of interest provisions.

We have reviewed K.S.A. 46-215 et seq. in its entirety and find that so long as you continue abstaining from participation in the making of contracts with the corporation and maintain proper disclosure statements on file that you have met the requirements in this Act.

Opinion No. 80-29

Written September 17, 1980 to Mary E. Barbero, Kansas City Area Office,  
P. O. Box 1248, Kansas City, Kansas 66117.

This opinion is in response to your letter of August 19, 1980, in which you request an opinion from the Kansas Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction in this matter is limited to the application of K.S.A. 46-215 et seq. and K.S.A. 75-4301 et seq., the latter of which does not apply. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as an employee of the Kansas City, Kansas, area office of Social and Rehabilitation Services. In that position one of your duties is the placement of Medicaid patients into nursing homes as well as setting up payments to the nursing homes.

You also advise us that you have been requested to serve on the advisory boards of several nursing homes. The positions are without compensation, and the boards meet twice a year to give suggestions for ways for the homes to improve the care of the patients, housekeeping, medical records, etc. Each nursing home is required by law to have an advisory board and the boards are usually comprised of physicians, ministers,

pharmacists and social workers. The boards are purely advisory in nature and have no binding authority on the nursing home.

Based on this factual situation we understand you to ask whether you may serve on the advisory boards during your tenure as a State employee.

K.S.A. 46-233 is applicable to your question. That section states in pertinent part as follows: "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.

Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee . . . (d) Subsections (a) and (b) shall not apply to the following:

- (1) Contracts let after competitive bidding has been advertised for by published notice; and
- (2) Contracts for property or services for which the price or rate is fixed by law."

Assuming for the moment that your actions on behalf of the State constitute contracts between the State and the nursing homes and that the rate therefore is not fixed by law, there is still the question of whether service on an advisory board of the nature you have described constitutes a "substantial interest". That phrase is defined in K.S.A. 46-229 in pertinent part as follows: "(d) The holding of the position of officer or director of any business, irrespective of the amount of compensation received by the individual holding any such position."

The question in applying this language is whether the position on an advisory board of this nature constitutes the "holding of a position as an officer or director". In our view, where as here you have only advisory powers and cannot bind the nursing homes, it is our opinion that the definition of "officer or director" has not been met.

It is, therefore, our opinion that you do not hold a statutory "substantial interest" in the nursing homes under the situation described to us and may serve on the advisory boards during your service as a State employee.

Written December 17, 1980 to Patrick D. McManus, Secretary of Corrections, Kansas Dept. of Corrections, 535 Kansas Avenue, Topeka, Kansas 66603.

This opinion is in response to your letter of November 21, 1980, in which you request an opinion from the Governmental Ethics Commission.

We note at the outset that the Commission's jurisdiction is limited to the application of K.S.A. 46-215 et seq. and 75-4301 et seq., the latter of which does not apply to your questions. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as Secretary of Corrections with the consent of the persons involved. You advise us that the correctional institution annually enters into contracts with an educational institution to provide a prison education program on the premises of the correctional institution. In the case at hand, the educational institution is a junior college in the community. The correctional institution budgets for and pays to the community college to provide an educational coordinator on the correctional institutional premises and employees of the college to teach courses. The Director of the correctional institution is responsible for the execution of the contract. One of the Deputy Directors of the institution is responsible for overall management and supervision of educational programs in the correctional context. Both the Director of the correctional institution and the Deputy Director responsible for educational programs have personal contracts with the junior college to teach at the college in the evening. Neither of the correctional officials play any part in the actual administration of the college. The Director of the correctional institution in a newsletter and perhaps by other means has encouraged the employees of the correctional institution to improve themselves by enrolling in courses at the junior college.

Based on this factual situation you ask the following questions:

1. Does a conflict of interest arise for the Director of the correctional institution because of his paid employment at the junior college and his responsibility for selecting and contracting educational institutions for services at the correctional institution and the actual execution of that contract?
2. Does a conflict of interest arise in the Deputy Director because of his contract to teach at the college and his responsibility for supervision and management of the programs at the correctional institution including general supervision and administration of the contract with the college and the inherent relationship with the educational coordinator and educational employees present on the correctional institution premises?
3. Does a conflict of interest arise for either of the correctional officials by encouraging or soliciting enrollment on the part of correctional employees under their supervision to enroll in courses at the junior college, especially if the courses to be enrolled in are or would likely be courses taught by the Director or Deputy Director?

K.S.A. 46-233 applies to your first two questions. That section states,

in pertinent part, as follows: "(a) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.... (d) Subsections (a) and (b) shall not apply to the following: (1) Contracts let after competitive bidding has been advertised for by published notice; and (2) Contracts for property or services for which the price or rate is fixed by law."

From a review of this language, it is our opinion that it is impermissible for the Director of the correctional institute to be employed by the junior college while at the same time making contracts on behalf of the state with the college. Please note that it is the participation in the making of the contract on behalf of the state which causes this conflict to exist; the law does not preclude the dual employment, if the participation on behalf of the state is eliminated.

Turning to your second question, we do not believe the mere administration of an already existing contract alone precludes employment with the entity contracted with. However, we assume that the Deputy Director has under the current procedure input into the nature of the contractual setting and on that assumption would find it inappropriate under the above section for the Deputy Director to be employed by the college at this time, unless new procedures are developed to divorce the Deputy Director from input into the contract-making setting.

On the last question, we have reviewed the acts within our jurisdiction and find no conflicts under those laws.

If we may provide you any further assistance on this matter, don't hesitate to contact our staff.

Written December 17, 1980 to Peter V. Ruddick, Speer, Austin, Holliday, Lane and Ruddick, 201 North Cherry Street, P.O. Box 870, Olathe, Kansas 66061.

This opinion is in response to your letter of November 10, 1980, in which you request an opinion from the Kansas Governmental Ethics Commission. We note at the outset that the Commission's jurisdiction in this matter is limited to the application of K.S.A. 46-215 et seq. and K.S.A. 75-4301 et seq., the latter not applying here. Thus, whether some other common law or statutory system applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as legal counsel for Live and Learn, Inc., a non-profit Kansas corporation which provides long-term placement and supervision for neglected, pre-delinquent and abused children. You advise us that one of the principals of this corporation is Dr. Gerald K. Gentry, who is now Chief Psychologist at the Osawatimie State Hospital.

You advise us that Dr. Gentry plays no role in referrals or recommendations made by other staff psychologists for placements by the Department of Social and Rehabilitation Services with such facilities as Live and Learn, Inc. Rather, each staff psychologist communicates a recommendation for the type of service necessary for a particular child and S.R.S. then determines what facility is appropriate. We understand Dr. Gentry does not have an approval function in the decision made by staff psychologists and plays no role in the ultimate determination made by S.R.S.

Based on this factual situation, we understand you to ask whether Dr. Gentry's status with the State of Kansas precludes contracts between the State and Live and Learn, Inc.

K.S.A. 46-229 may apply to your question. That section states:

"(1) No state officer or employee shall in his or her capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.

Whenever any individual has, within the preceding two (2) years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one (1) year following termination of employment as a state officer or employee. ....(d) Subsection (a) and (b) shall not apply to the following: (1) Contracts let after competitive bidding has been advertised for by published notice; and (2) Contracts for property or services for which the price or rate is fixed by law."

We assume from the tenor of your letter that Dr. Gentry holds a "substantial interest" in Live and Learn, Inc., as that phrase is defined in K.S.A. 46-229. In such circumstances, the general rule is that he may not participate on behalf of the State in making contracts with Live and Learn, Inc. Based on the factual situation described to us it does not appear

that Dr. Gentry is participating on behalf of the State and so long as Dr. Gentry continues to play no role in contracts between the State and Live and Learn, Inc., no conflict exists under the above section.

Opinion No. 82-2

Marcia K. Ricklefs  
S.R.S. - 105  
P. O. Box 1424  
Topeka, Kansas 66601

Dear Ms. Ricklefs:

This opinion is in response to your letter of December 7, 1981, in which you request an opinion from the Kansas Public Disclosure Commission.

We note at the outset that the Commission's jurisdiction on this matter is limited to the application of K.S.A. 46-215 et seq. and K.S.A. 25-4301 et seq., the latter of which does not apply here. Thus, whether some other common law, statutory system, or rule and regulation applies to your question is not covered by this opinion.

We understand you request this opinion in your capacity as an Income Maintenance Worker with the Department of Social and Rehabilitation Services. In that capacity a portion of your caseload deals with clients in the aged, blind and disabled categories whose last names fall within the "A" to "GUN" portion of the alphabet.

You describe for us a program for Adult Family Home Services which is administered by S.R.S. The program consists in part of the provision by individuals of room and board to an aged, blind or disabled person. Providers are paid a monthly fee for the service.

Based on this factual situation, you ask whether it would be permissible for you to be a provider of services under the Adult Family Home Services program so long as the aged, blind or disabled person is not one of your clients.

We have reviewed K.S.A. 46-215 et seq. in its entirety and so long as you do not participate in any manner in your capacity as a state employee in the process by which you are approved as a provider or in which recipients of the service are selected, or in the preparation of any contracts relating to the provision of such service, we find no conflict of interest to exist under the factual situation provided to us.

STATE OF KANSAS



KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH  
TOPEKA, KANSAS 66612  
PHONE: (913) 296-4219

TOTAL OF STATE EMPLOYEES PER AGENCY EARNING AT THE RATE OF \$25,000 OR MORE  
AND, THEREFORE, REQUIRED TO FILE A STATEMENT OF SUBSTANTIAL INTERESTS ON  
JANUARY 31, 1983

AGENCY	NUMBER REQUIRED TO FILE	NUMBER EXEMPT TEACHING
Abstracters Board of Examiners.....	0	
Accountancy, Board of .....	0	
Adjutant General .....	6	
Administration, Department of .....	158	
Adult Authority, Kansas .....	6	
Aging, Department on .....	6	
Agriculture, Board of .....	51	
Animal Health Department.....	4	
Arts Commission .....	0	
Attorney General .....	14	
Banking Commissioner .....	11	
Barber Examiners, Board of .....	0	
Behavioral Sciences, Board of .....	0	
Bureau of Investigation, Kansas.....	35	
Civil Rights, Commission on .....	6	
Conservation Commission.....	1	
Consumer Credit Commissioner .....	1	
Corporation Commission .....	49	
Correctional Institution for Women, Ks.....	2	
Correctional-Vocational Training Center ...	4	
Corrections, Ombudsman Board .....	1	
Corrections, Department of .....	27	
Cosmetology, Board of .....	0	
Credit Unions, Department of .....	2	
Crime Victims Reparations Board .....	0	
Deaf, School for the .....	12	
Dental Board .....	0	
Developmentally Disabled, Ad. Prte. Ser. ..	0	
Economic Development, Dept. of .....	17	
Education, Department of .....	64	
Embalming, Board of .....	0	
Emporia State University .....	65	170
Energy Office .....	2	
Fire Marshal .....	1	
Fish and Game Commission, Kansas .....	28	
Fort Hays State University .....	55	68
Governor .....	9	
Grain Inspection Department .....	7	
Healing Arts, State Board of .....	0	
Health & Environment, Dept. of .....	152	
Hearing Aid Dispensers, Bd. of Exam.....	0	
Highway Patrol .....	80	
Historical Society, State .....	10	
Human Resources, Dept. of .....	180	
Industrial Reformatory, Kansas State .....	11	
Insurance Department .....	31	
Kansas Neurological Institute .....	29	
Kansas State University .....	436	421



AGENCY	NUMBER REQUIRED TO FILE	NUMBER EXEMPT TEACHING
Kansas Technical Institute .....	8	15
Larned State Hospital .....	60	
Legislative Administrative Services .....	5	
Legislative Educational Planning Comm.....	0	
Legislative Research Department .....	18	
Library, State .....	2	
Lieutenant Governor .....	0	
Norton State Hospital .....	11	
Nursing, Board of .....	3	
Optometry Examiners, Board of .....	0	
Osawatomie State Hospital .....	44	
Park & Resources Authority .....	6	
Parsons State Hospital & Training Center..	28	
Penitentiary, State .....	10	
Pharmacy, Board of .....	0	
Pittsburg State University .....	69	61
Post Audit, Legislative Division of .....	18	
Public Disclosure Commission, Kansas .....	0	
Rainbow Mental Health Facility .....	10	
Real Estate Commission .....	0	
Reception & Diagnostic Center, Kansas ....	8	
Regents, Board of .....	8	
Retirement System, Kansas Public Empl.....	7	
Revenue, Department of .....	92	
Revisor of Statutes.....	12	
Savings & Loan Department.....	3	
Secretary of State .....	5	
Securities Commissioner of Kansas .....	4	
Social & Rehabilitation Services .....	236	
Soldiers Home of Kansas .....	1	
State Board of Indigents' Defense Ser.....	5	
State Fair, Kansas .....	2	
Tax Appeals, Board of .....	7	
Technical Professions, State Board of.....	0	
Topeka State Hospital .....	60	
Transportation, Department of .....	489	
Treasurer, State .....	5	
University of Kansas .....	262	703
University of Kansas Medical Center.....	182	354
Veterinary Examiners, Board of .....	0	
Visually Handicapped, School for the .....	4	
Vocational Education, Advisory Council for	1	
Water Office, Kansas .....	11	
Wheat Commission .....	1	
Wichita State University.....	98	196
Winfield State Hospital & Training Ctr....	35	
Youth Center at Atchison .....	5	
Youth Center at Beloit .....	5	
Youth Center at Topeka .....	15	

STATE OF KANSAS



KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH  
TOPEKA, KANSAS 66612  
PHONE: (913) 296-4219

COMPENDIUM OF  
AUTHORITIES, BOARDS, COMMISSIONS,  
COMMITTEES, COMPACTS, COUNCILS  
AND  
SOCIETIES

July, 1982

KANSAS STATUTES

<u>K.S.A.</u>	<u>NAME</u>
* 1-201	Board of Accountancy
2-1313	Advisory Committee on Anhydrous Ammonia Regulations
* 2-1904	State Conservation Commission
* 2-2458	Pesticide Advisory Board
* 2-2603	Kansas Wheat Commission
* 2-3002	Kansas Corn Commission
* 2-3002	Kansas Grain Sorghum Commission
* 2-3002	Kansas Soybean Commission
2-3101	Interstate Agricultural Grain Marketing Commission
* 8-2556	Drivers License Medical Advisory Board
8-1201	Vehicle Equipment Safety Compact
* 8-2412	Dealer Review Board
** 12-2518	Mo-Kan Metropolitan Development District & Agency Compact
** 12-2524	Kansas City Area Transportation District & Authority
16a-6-301	Council of Advisors on Consumer Credit
*** 17-2232	Credit Union Council
20-119	Supreme Court Nominating Commission
20-152	Judicial Study Advisory Committee
20-2201	Judicial Council
** 22-3707	Kansas Adult Authority
22-4101	Interstate Parole Compact
22-4514	Board of Supervisors of Panels to Aid Indigent Defendants
25-2203	State Election Board
25-3201	State Board of Canvassers
* 25-4119a	Kansas Public Disclosure Commission
31-151	Governor's Commission on Fire Protection Standards and Education
34-121	State Grain Advisory Commission
38-1002	Interstate Compact on Juveniles
38-1202	Interstate Compact on the Placement of Children
38-1401	Children and Youth Advisory Committee
39-1004	Day Care Advisory Committee
39-1203	Rehabilitation & Halfway House Advisory Committee
40-1902	Nonprofit Medical Service Corporation
40-19a03	Delta Dental Plan of Kansas Inc. Board
40-19b03	Nonprofit Optometric Service Corporation
40-2102	Plan(s) Governing Board, Commissioner of Insurances'
40-2109	Governing Plan Board of Risk of Certain Workmen's Compensation and Employee's Liability Insurance
40-2111	Governing Plan Board of Companies Fire Insurance
40-2905	Board of Directors of the Kansas Insurance Guaranty Association Act
40-3007	Board of Directors of the Kansas Life and Health Insurance Guaranty Association
40-3413	Governing Board of Health Care Provider Insurance
*** 41-203	Alcoholic Beverage Control Board of Review
*** 44-709	Employment Security Board of Review
44-714	Employment Security Advisory Council
* 44-820	Agricultural Labor Relations Board

- \* - Members receive compensation
- \*\* - Members subject to Senate Confirmation
- \*\*\* - Members receive compensation and are subject to Senate Confirmation

<u>K.S.A.</u>	<u>NAME</u>
*** 44-1003	Commission on Civil Rights
44-1207	Advisory Committee on Minimum Wage and Maximum Hours
46-401	Senate Committee on Interstate Cooperation
46-402	House Committee on Interstate Cooperation
46-403	Governor's Committee on Interstate Cooperation
46-404	Kansas Commission on Interstate Cooperation
46-407a	Advisory Committee to the Kansas Commission on Interstate Cooperation
46-912	Joint Committee on Special Claims Against the State
46-1101	Legislative Post Audit Committee
46-1201	Legislative Coordinating Council
46-1208	Legislative Budget Committee
46-1208a	Legislative Educational Planning Committee
46-1701	Joint Committee on State Building Construction
* 47-818	State Board of Veterinary Medical Examiners
* 48-214	Military Advisory Board
48-261	Military Disability Board
* 48-315	Kansas Armory Board
** 48-2002	Midwest Nuclear Board
* 49-404	Mined-Land Conservation and Reclamation Board
55-865	Interstate Oil Compact Commission
65-1,100	Renal Disease Advisory Committee
65-737b	Milk Advisory Committee
* 65-2812	State Board of Healing Arts
65-2903	State Examining Committee for Physical Therapy
65-3101	Interstate Compact on Mental Health
*** 65-3432	Hazardous Waste Disposal Facility Approval Board
* 65-3506	Board of Adult Care Home Administrators
* 65-4316	Emergency Medical Services Council
* 65-4705	Statewide Health Coordinating Council
68-2003	Kansas Turnpike Authority
71-901	Advisory Council of Community Junior Colleges
* 72-964	State Advisory Council for Special Education
* 72-4409	State Advisory Council for Vocational Education
72-4922	Advisory Commission on Proprietary Schools
* 72-6012	Education Commission of the States
72-6507	Washburn University Board of Regents
* 72-7503	State Board of Education
72-8502	Professional Teaching Standards Advisory Board
72-8502a	School Administrators Professional Standards Advisory Board
72-8503	Professional Teaching Practices Commission
* 73-1208a	Kansas Veterans Commission
* 74-503	State Board of Agriculture
* 74-520	Board of State Fair Managers
** 74-601	State Corporation Commission
* 74-1106	Board of Nursing
* 74-1404	Kansas Dental Board
* 74-1501	Board of Examiners in Optometry
* 74-1603	Board of Pharmacy

<u>K.S.A.</u>	<u>NAME</u>
* 74-1701	..... State Board of Embalming
* 74-1805	..... Board of Barber Examiners
** 74-2433	..... State Board of Tax Appeals
	74-2622 ..... Kansas Water Authority
* 74-2701	..... Kansas State Board of Cosmetology
	74-2807 ..... Advisory Committee on Podiatry
	74-2906a ..... Kansas All-Sports Hall of Fame Board of Trustees
*** 74-3004	..... State Banking Board
*** 74-3113	..... Savings and Loan Board
** 74-3201	..... State Board of Regents
	74-3229 ..... Student's Advisory Committee to the State Board of Regents
	74-3236 ..... Education Facilities Commission
*** 74-3301	..... Fish and Game Commission
* 74-3901	..... Abstracters' Board of Examiners
* 74-4001	..... Kansas Animal Health Board
* 74-4201	..... Kansas Real Estate Commission
** 74-4504	..... State Park and Resources Authority
	74-4513 ..... State Park and Resources Authority Advisory Committee
* 74-4528	..... Joint Council on Recreation
*** 74-4905	..... Kansas Public Employees Retirement Systems Board of Trustees
	74-5019 ..... Advisory Commission to the Department of Economic Development
* 74-5202	..... Kansas Arts Commission
	74-5402 ..... Kansas Antiquities Commission
	74-5501 ..... State Planning Council on Developmental Disabilities Services
	74-5606 ..... Law Enforcement Training Commission on Peace Officers' Standards and Training
	74-5701 ..... Kansas Law Enforcement and Civil Defense Communications Committee
* 74-5801	..... Kansas Board of Examiners in Fitting and Dispensing of Hearing Aids
	74-6501 ..... Advisory Committee on Mexican American Affairs
	74-6605 ..... Natural and Scientific Areas Advisory Board
	74-6701 ..... Advisory Committee on Employment of the Handicapped
* 74-6803	..... Energy Advisory Council
* 74-7004	..... State Board of Technical Professions
*** 74-7303	..... Crime Victims Reparations Board
* 74-7401	..... Corrections Ombudsman Board
* 74-7501	..... Behavioral Sciences Regulatory Board
* 74-7601	..... Social and Rehabilitation Services Review Commission
	75-129 ..... Governor's Residence Advisory Commission
* 75-1118	..... Municipal Accounting Board
	75-2237 ..... Capitol Area Plaza Authority
	75-2246 ..... State Capitol Murals Committee
	75-2546 ..... State Library Advisory Commission
	75-2550 ..... Board of Regional Systems of Cooperating Libraries

<u>K.S.A.</u>	<u>NAME</u>
75-2578	..... Kansas Library Network Board
75-2701	..... State Historical Society
75-2719a	..... State Historic Sites Board of Review
*** 75-2929a	..... State Civil Service Board
75-2956b	..... Kansas State Employee Award Committee
75-3046	..... Biennial Report Advisory Committee
75-3302d	..... Advisory Commission on Mental Health & Retardation Services
75-3318	..... Committee on State & Unified School Districts Purchases
75-3343	..... Vending Facilities Advisory Committee
75-3502	..... State Records Board
* 75-3708	..... State Finance Council
75-3764c	..... State Capitol Dome Committee
* 75-3780	..... State Building Advisory Commission
75-4101	..... Committee on Surety Bonds and Insurance
*** 75-4221a	..... Pooled Money Investment Board
*** 75-4323	..... Public Employee Relations Board
* 75-4708	..... Information Systems Policy Board
75-4711	..... State Telecommunications Advisory Committee
75-4906	..... Kansas Public Television Board
* 75-5002	..... Highway Advisory Commission
75-5287	..... Corrections Industries Advisory Committee
75-5381	..... Kansas Citizens' Committee on Alcohol and Other Drug Abuse
75-5522	..... Advisory Committee on Deferred Compensation
75-5614	..... Advisory Commission on Health
75-5615	..... Advisory Commission on Environment
75-5629	..... Advisory Committee on Food Service and Lodging Standards
75-5643	..... Advisory Commission on Crippled Children
75-5911	..... Advisory Council on Aging
76-3a16	..... Board of Trustees of University of Wichita
77-423	..... State Rules & Regulations Board
77-436	..... Joint Committee on Administrative Rules & Regulations
79-1444	..... Technical Advisory Committee on Assessment-Sales Ratio Study
79-4301	..... Multistate Tax Compact
82a-518	..... Republican River Compact Administration
82a-520	..... Arkansas River Compact Administration, Kansas/Colorado
82a-528	..... Arkansas River Compact, Kansas/Oklahoma
82a-529	..... Big Blue River Compact, Kansas/Nebraska
82a-1404	..... Weather Modification Advisory Committee

Established by the 1982 Legislative Session

Chapter 133	Land survey Advisory Committee - HB No. 2613
Chapter 254	The Central interstate low-level radioactive waste comm. - HB 2809
Chapter 267	The Advisory board on low-level radioactive waste - HB No. 2810
Chapter 228	Advisory Committee on Regulation of Oil & Gas Sub. S. 498 S2
Chapter 308	Kansas Commission for the Hearing Impaired - HB No. 2268 S2
*** Chapter 142	State Board of Indigents' Defense Services SB No. 515 S1
Chapter 309	Advisory Commission on Juvenile Offender Programs - HB No. 3023

SUPREME COURT RULES

<u>RULE</u>	<u>NAME</u>
204 .....	Kansas Board for Discipline of Attorneys
301 .....	State Board of Examiners of Court Reporters
602 .....	Kansas Commission on Judicial Qualifications
701 .....	Kansas Board for Admission of Attorneys

EXECUTIVE ORDER

<u>No.</u>	<u>NAME</u>
79-36 .....	Governor's Council on Fitness
81-49 .....	Governor's Advisory Committee on Veterans' Affairs
81-51 .....	Governor's Committee on Professional Negotiations
81-53 .....	Governor's Committee on Domestic Violence
82-56 .....	Governor's Committee on Crime Prevention

PUBLIC LAW

<u>No.</u>	<u>NAME</u>
93-203 .....	Kansas, CETA/Balance of State Employment & Training Council
93-355 .....	Advisory Council for Kansas to the National Legal Services Corporation
93-536 .....	Kansas Historical Records Advisory Board
95-524 .....	Private Industry Council
95-524 .....	State Employment & Training Council
97-35 .....	Advisory Committee to the State Board of Education on Block Grants

ADVISORY BOARDS, COMMISSIONS OR COMMITTEES WHICH MAY BE CREATED AND MEMBERS APPOINTED BY THE CHIEF EXECUTIVE OFFICER OF AN AGENCY

<u>K.S.A.</u>	<u>APPOINTING AUTHORITY</u>
35-135 .....	State Fire Marshal
75-4808 .....	Governor
75-5018 .....	Secretary of Transportation
75-5313 .....	Secretary of Social & Rehabilitation Services
75-5616 .....	Secretary of Health & Environment
75-5724 .....	Secretary of Human Resources