Opinion No. 303
Answered by Letter (Ashby)

September 28, 1965

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303

Honorable Don D. Davis
State Representative
Webster County
Niangua, Missouri

Dear Mr. Davis:

This letter is in reply to your inquiry as to whether the Public Administrator can use the office furnished him in the Court House by the county to transact his private insurance business.

You stated in your letter that he devotes "full time in this office operating this insurance business * * * but the Public Administrator in a county of the size has practically no duties". You stated further that his business is advertised and his telephone (which this office has learned he pays for) is listed at his office in the Court House. It is assumed from your letter that such private activities of the Public Administrator do not interfere with the performance of his duties nor interfere with other public officials in the Court House in the exercise of their public functions or you would have stated that fact.

Any opinion which is rendered by this office must necessarily be limited by the ambit of the facts that you submit.

Under Section 49.270, V.A.M.S., the County Court has control and management of the county property, real or personal, belonging to the county. It has been held by the Supreme Court that the county court in the exercise of such control of public property, i.e., the Court House, has power to summarily expel intruders. The court went on to further rule that where a person has possession by consent or as an officer he should be notified of the County Court's intention to evict him and have a reasonable time to leave, otherwise the individual court members may be liable (Sparks vs. Purdy, et. al., 11 Mo 142, 144).

The test to determine if a use of public properties is improper is whether such use is inconsistent with, or substantially or materially interferes with, the use of the property for the particular purpose to which it is dedicated. Any use that exceeds the measure set out above constitutes a misuser or diversion (O'Dell vs. Pile, et. al., 260 SW 2d, 521,525).

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Thus, the issue involved is whether the Public Administrator has so misused the office furnished him as to constitute a misuser or diversion within the meaning of the term as defined in the O'Dell case (supra). Obviously, a public officer who may occasionally or casually transact private business in his office would not violate the spirit or letter of the law. On the other hand, where a public officer transacts his private business affairs from his court house office on a day to day basis, the question presented becomes one of fact, where all aspects and circumstances involved need to be considered by the County Court.

The mere fact that the Public Administrator engages in private business in addition to his duties of Public Administrator does not itself constitute the basis for objection to the Public Administrator engaging in private business. The Public Administrator, as a matter of fact, may engage in private business during the usual business hours or personally devote such time as he deems proper to his private business when such activity does not interfere with the faithful performance of his duties. (See State ex rel Cumpton 240 S.W. 2d 877, 885) Certainly, there may be times when the Public Administrator can properly discuss insurance business with his clients subject to the limitations set out in O'Dell vs. Pile (supra). The question must be measured in terms of reasonableness and by the application of good judgment.

Based on the limited facts submitted, this office is unable to reach a conclusion as a matter of law that the acts of the Public Administrator constitute a misuser or diversion of public property.

It is the view of this office that: (1) public buildings such as court houses should be used to conduct public affairs; and (2) that public officers may conduct their private business affairs from the offices in the Court House provided such use shall not be inconsistent with, or substantially or materially interfere with, the use of the property for the particular purpose for which it is dedicated. The practice of soliciting insurance or conducting any private business affairs from the Court House must be measured and tested by the application of reason and good judgment.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

RCA/jlf