

Answer by letter-Wood

September 17, 1970

OPINION LETTER NO. 458

Honorable Charles S. Broomfield
State Representative
District No. 87
4801 No. Lister
Kansas City, Missouri 64119



Dear Representative Broomfield:

You asked for an opinion on whether the following situation constitutes a violation of the conflict of interest statutes, Section 105.450 to 105.495, RSMo 1969. An employee of the Gas Service Company which is the only supplier of natural gas for North Kansas City, has been appointed to the hospital board of that city (Section 96.150, RSMo, et seq.). The person is in a supervisory position with the Gas Service Company for an area that does not include North Kansas City and the hospital, and he does not have any direct control through his employment with Gas Service Company over the North Kansas City area and the Municipal Hospital. You suggest, however, that as a member of the hospital board he could be influential in determining whether the hospital would continue to use natural gas at present or increased levels, instead of some other source of power, in the event of an expansion of the present facility. You also pointed out that the person is employed by a public utility, which is regulated by the Public Service Commission, and asked whether this might affect the applicability of the conflict of interest statutes.

Section 105.490, RSMo 1969, which covers the situation in question, reads as follows:

"1. No officer or employee of an agency shall transact any business in his official capacity with any business entity of which he is an officer, agent or member or in which he owns a

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substantial interest; nor shall he make any personal investments in any enterprise which will create a substantial conflict between his private interest and the public interest; nor shall he or any firm or business entity of which he is an officer, agent or member, or the owner of substantial interest, sell any goods or services to any business entity which is licensed by or regulated in any manner by the agency in which the officer or employee serves.

"2. Any person who violates the provisions of this section shall be adjudged guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five hundred dollars or by confinement for not more than one year, or both."

While it might appear, because of its title, that Section 105.490, RSMo 1969, applies only to "state" officers, this office has held that a member of a hospital board "comes within the prohibitions of the conflict of interest statutes." (Section 105.450, RSMo, et seq.). See Attorney General Opinion No. 321, White, August 4, 1969. Since you state that the individual in question holds an executive or supervisory position with the Gas Service Company, we think it safe to assume that he is either an "officer, agent, or member" thereof, or that he "owns a substantial interest" therein.* The question now becomes whether the hospital board member is in a position to "transact any business" with the Gas Service Company. This office has repeatedly held that the power to "transact business" is present if the person has discretionary rather than ministerial duties. See Attorney General Opinion No. 282, Turner, June 28, 1966, Attorney General Opinion No. 196, David, June 13, 1967, and Attorney General Opinion No. 428, Lawson, December 1, 1966.

The board of the Municipal Hospital is required to:

*"'Substantial interest', ownership by the individual, or his spouse, directly or indirectly, of ten percent or more of any business entity, or of an interest having a value of ten thousand dollars or more, or the receipt by an individual or his spouse of a salary, gratuity, or other compensation or remuneration of six thousand dollars, or more, per year from any individual, partnership, organization, or association;" (Section 105.450(4), RSMo)

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" . . . control the expenditures of all moneys collected to the credit of the fund established for such facility and the construction, leasing, equipping, operating and maintaining of the facility and the grounds . . ." (Section 96.190, RSMo)

The board would be required to make a decision on the purchase of natural gas for the facility and thereby, in our opinion, "transact business" with the supplier of natural gas.

This brings up a further question. Has any particular board member violated the statute until he actually participates in a decision on the use of natural gas? We believe he has. Attorney General Opinion No. 188, Downs, September 3, 1968, held that an alderman who was also an officer and director of the city depository was in violation of Section 105.490, RSMo 1959, even though the board of alderman had not made a decision regarding the selection of the depository since the passage of the conflict of interest statutes in 1967. The opinion held the board of alderman had to exercise continuing judgment with respect to depository contracts and, therefore, the alderman who was an officer of the city depository was in violation of the statute. We believe the hospital board has a continuing judgment with respect to the public utility contract, and therefore, the board member who is an employee or officer of the Gas Service Company is in violation of Section 105.490, RSMo 1969.

The fact that the Gas Service Company is regulated by the Public Service Commission is, in our opinion, of no significance.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 321
8-4-69, White *Withdrawn*

Op. No. 282
6-28-66, Turner *Withdrawn*

Op. No. 196
6-13-67, David *Withdrawn*

Op. No. 428
12-1-66, Lawson *Withdrawn*

Op. No. 188
9-3-68, Downs *Withdrawn*