

May 20, 1974

OPINION LETTER NO. 206
Answer by letter-Klaffenbach

Honorable Jack E. Gant
Missouri Senate, 16th District
9517 East 29th Street
Independence, Missouri 64055



Dear Senator Gant:

This letter is in response to your question asking:

"May a city official's law partner resume his duties as director and counsel for a bank in which there are city funds deposited in that bank as a result of competitive bidding?"

You also indicate that the official involved is the mayor of the city of Independence, a charter city. However, there is no clear indication in your request respecting the involvement of the law partnership in the activities of the partner who is director and counsel of the bank.

You noted that you have reviewed a number of opinions issued by this office and therefore we will not repeat the substance of such opinions in this letter except as may be necessary. We refer to Opinions 123-1973; 75-1972; 188-1968; 7-1968; and 26-1966.

We note that Section 5.3 of the city charter, with respect to conflicts of interests, contains provisions similar to those contained in the applicable state statutes, however, we do not purport to interpret such city charter provisions as we do not deem this to be our function.

It is also our understanding with respect to such city charter that the council makes the selection of the city depository

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and retains the ultimate powers normally vested in such council with respect to depositories under the law although the day to day administration of city finances is through the city department of finance under charter provision 3.33. Further, we note that the charter provides, Section 2.5, that the mayor presides at meetings of the council and "[a]s a councilman, he shall have all powers, rights, privileges, duties, and responsibilities of a councilman, including the right to vote on questions."

As you know, in our Opinion 123-1973, we held that Section 106.300, RSMo, which prohibits any city officer from being directly or indirectly interested in any contract under the city, or in any work done by the city is applicable to charter cities.

In Opinion 19-1966, copy enclosed, we held that the mayor of a third class city who is president, director and stockholder of a bank in which city funds are deposited violates Section 77.470, RSMo. The provisions of Section 77.470 are similar to those of Section 106.300. Such a conflict would be even clearer in a case such as here where the mayor is by charter, a voting member of the council.

In our Opinion 246-1968, copy enclosed, we held that a member of the city council of a third class city who is an insurance agent violates Section 105.490, RSMo, and Section 106.300, if he furnishes insurance to the city and that such a councilman would also be in violation of such sections if he was a member of the association participating in the division of the agent's commissions.

Further, in our Opinion 44-1970, copy enclosed, we held that a fourth class city fire chief who sells equipment and services to such city through a company owned in whole or in part by him violates Section 106.300. In our Opinion 295-1973, copy enclosed, with respect to Section 12, Article III of the Constitution of Missouri, which prohibits members of the legislature from holding other government employment, we held that the law firm of such legislator, under the opinion of the Advisory Committee of the Missouri Bar, could not render professional services with regard to any matter which a partner, associate or employee could not properly perform. Your particular attention is called to the last full paragraph of that opinion in which we found it unnecessary to determine whether or not the firm is employed in the sense of the constitutional prohibition, in view of such rule, and in the absence of an absolute separation of identity and operation of the persons concerned.

In view of the above and in summary, it appears that unless there is an absolute separation of identities and operation of

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such bank director-counsel and the mayor's law partnership, which separation would be extremely unlikely, there would appear to be both a conflict of interest and a violation of the Missouri Bar Advisory Committee rule noted.

You have not furnished us with precise information however, and since such a determination ultimately involves a factual determination, we do not purport to determine whether there is in fact a conflict.

Very truly yours,

JOHN C. DANFORTH
Attorney General