

## Chapter VII. Public Officers

*Revised 7/17/19*

The term “public officers” includes elected and appointed officers at all levels of government, including federal officers, state officers, and county, city and township officers, as well as officers in other local units of government. Often the appointed officers in a governmental unit are appointed by the elected officers; for instance, the elected mayor and city council members in a city government may appoint the city manager and city clerk. All are public officers.

### **a. Incompatibility and Conflict of Interest**

#### **Incompatibility**

Incompatibility refers to a situation where one person is prohibited from holding two elected offices or an elected office and an appointed position. The prohibition might be written in the constitution or statute, or it might be the result of a court decision or an opinion issued by the Attorney General. Likewise, court decisions and Attorney General opinions might rule certain offices to *not* be incompatible. Generally, incompatibility is based on an inconsistency in the functions of the two offices under consideration. When the duties of one office interfere with the performance of the duties of another, an incompatibility exists, and one person may not hold both offices. When one office supervises, disciplines or controls the salary of another, the two positions are considered incompatible.

An example of constitutional incompatibility is Article 3, Section 13 of the Kansas Constitution, which prohibits judges from holding other offices.

An example of statutory incompatibility is KSA 19-205, which states: “No person holding any state, county, township or city office shall be eligible to the office of county commissioner in any county in this state.”

The Kansas Supreme Court has also recognized the common law incompatibility doctrine *See U.S.D. 501 v. Baker*, 269 Kan. 239 (2000) (employees of local unified school districts may not be members of the local boards of education that employ them); and *see id. generally* (overview of the common law incompatibility doctrine).

The Attorney General has also issued at least one ruling on incompatibility involving the office of county commissioner and the position of city law enforcement officer. Kan. Atty. Gen. Op. No. 82-8.

#### **Conflict of Interest**

A conflict of interest occurs when a public officer’s duty to act in the best interest of the public conflicts with his/her private situation. Private situations which may create conflicts of interest include leadership positions in private organizations and businesses, ownership of property, and investments. In order to publicly disclose potential conflicts of interest,

the law requires public officers in policymaking positions to file Statements of Substantial Interests as public records disclosing their assets.

*State laws* dealing with conflicts of interest deal mostly with local officials. These laws have three major components:

- (1) they require disclosure of substantial business interests,
- (2) they prohibit public officers and employees from making contracts involving the local governmental entity and the business in which the person has a substantial interest, and
- (3) they prohibit public officers from acting on any matter (i.e., voting on an issue as a member of a governing body) where their substantial interests are implicated unless their interests have been publicly disclosed.

[KSA 75-4301a et seq.]

The courts have also recognized a common law component of the doctrine of conflict of interest. A public officer has a duty to serve the public and must avoid situations that will cause him/her to act in a way that is not in the best interest of the public. Any such action is considered a breach of confidence. *See Anderson v. City of Parsons*, 209 Kan. 337, 341 (1972) (“We . . . recognize the common law principle that a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interest of the public.”)

*Federal law* also prohibits certain conflicts of interest, most notably in the Hatch Act, which restricts political activities of certain federal officers and employees. These restrictions apply to persons working in programs that receive federal funding in the form of grants or loans. [5 U.S.C. 1501 et seq.]

Many *local units of government* adopt policies prohibiting certain actions by officers and employees which might cause conflicts of interest. This is usually done through the adoption of ordinances or resolutions.

### **b. Vacancies in Office**

Vacancies in elected offices can be caused by resignation, death, recall or ouster. In some cases, a vacancy may occur when an officeholder no longer possesses the qualifications for the office, such as when a person moves out of the district he/she represents, if the qualifications for the office include residency in the district. If this happens and the officeholder does not resign, actions may have to be taken by the governing body of the district or by a court to declare a vacancy.

When a county official elected on a partisan basis resigns, the law says the official should address the letter of resignation to the person who has the authority to appoint the replacement. It is the governor who makes the official appointment after the party district convention chooses a person to submit to the governor. Thus, elected county officials should address resignation letters to the governor and send a copy to the county election officer, who notifies the county party chair that a convention needs to be called to choose a person for the governor to appoint. [KSA 19-2606]

Whatever the cause of the vacancy, there is a statute prescribing a method for filling it. (See the chart titled “Filling Vacancies in Elected Offices” at the end of this chapter.)

### **c. Filling Vacancies**

Vacancies are filled through an appointment process. In some cases, another governing body appoints a person to fill the vacancy. An example is township offices, where vacancies are filled by the board of county commissioners. [KSA 25-1606, 80-201]

Some vacancies are filled by the remaining members of the governing body, such as city council/commission offices, which are filled by the remaining council members or by the mayor. [KSA 14-204, 15-209] These are all offices elected on a *nonpartisan* basis.

Vacancies in offices elected on a *partisan* basis are usually filled when the governor appoints a person selected by a party district convention. One exception is township offices, cited above. When a vacancy occurs, the county party chair of the party to which the former officeholder belonged when last elected calls a convention of the precinct committeemen and committeewomen in the election district. The convention must be held within 21 days of the day the chair receives notice of the vacancy. The name of the person selected at the convention to fill the vacancy is certified to the Governor, who appoints the person within seven days. [KSA 25-3902, 25-3904] The Governor notifies the Secretary of State of the appointment, and the Secretary of State sends a certificate of appointment along with a blank oath form to the appointee.

### **d. Election for Unexpired Term**

When a vacancy in an elected office occurs before the midpoint of the term of office, the person appointed to fill the vacancy often must face a midterm election for the unexpired term. This is determined by specific statutes governing the various offices. A common rule found in statutes governing most state, county, city and school offices is that if the vacancy occurs before May 1 of the second year of a four-year term, the appointee must face election the following November for the remaining two years of the term. If the vacancy occurs after May 1 of the second year of the term, the appointee's term ends at the regular time. [See *e.g.* KSA 25-321]

If the vacancy is in an office elected on a partisan basis, the midterm election includes a primary as well as the general election.

### **e. Oaths of Office**

All officers and employees of the state or any county, city or other municipality of government in Kansas must sign oaths before assuming the duties of the offices or positions. In most cases the oaths are filed with the governing body of the jurisdiction. State employees' oaths are filed with the employing agency. [KSA 75-4310]

The language of the oath is prescribed in KSA 54-106. The persons authorized to administer oaths are named in KSA 54-101, and they include notaries public, judges, mayors, court clerks, county clerks, city clerks in second and third class cities, and registers

of deeds. A separate statute, KSA 54-109, authorizes the Secretary of State and Assistant Secretary of State to administer oaths.

(See the chart titled “Qualifications of Candidates and Officeholders.”)

The chart below provides information on the oaths and terms of some public officers.

**OATHS AND COMMENCEMENT OF TERMS OF OFFICE**

<b>Office</b>	<b>Legal Authority</b>	<b>Term Begins</b>	<b>Oath Deadline</b>
U.S. President	U.S. Constitution, Amendment 22	January 20	Same
U.S. House, Senate	U.S. Constitution, Amendment 20	January 3	Same
State officers	KSA 25-313 KSA 75-3001	2 <sup>nd</sup> Monday in January	Same
Community college trustee	KSA 71-1412	Second Monday in January	before taking office
Board of education	KSA 25-2023	Second Monday in January	same
County officers (except treasurer)	KSA 25-313 KSA 75-4308	2 <sup>nd</sup> Monday in January	before taking office
County treasurer	KSA 19-501	2 <sup>nd</sup> Monday in October	before taking office
Township officers	KSA 25-313 KSA 80-202	2 <sup>nd</sup> Monday in January	20 days after notified of election
City officers	KSA 25-2120	December 1 to 2 <sup>nd</sup> Monday in January	before taking office

## FILLING VACANCIES IN ELECTED OFFICES

OFFICE	STATUTE	PROCEDURE
<b>NATIONAL OFFICES</b>		
U.S. Senate	25-318, U.S. Constitution Article 1, Section 3, Clause 2; Amendment 17	Filled by temporary appointment from the Governor until the next election of representatives in Congress, then the vacancy shall be filled by election.
U.S. House	25-3501, 25-3502, U.S. Constitution Article 1, Clause 4	Filled by an election called for by the Governor. Date of the election is declared within 5 days after the vacancy occurs and should not be less than 75 days but no more than 90 days after the vacancy occurs, or the election will be held at times according to K.S.A. 25-3503
<b>STATE OFFICES</b>		
	25-312	State office vacancies are filled by Governor appointment unless otherwise provided.
Governor/Lt. Governor	Constitution, Article 1, Section 11	Lieutenant Governor becomes Governor if vacancy occurs in Governor's office.
Secretary of State	Constitution, Article 1, Section 11	Governor appoints replacement.
Attorney General	Constitution, Article 1, Section 11	Governor appoints replacement.
Insurance Commissioner	40-106	Governor appoints replacement.
State Treasurer	25-101b	Governor appoints replacement.
Senators/Representatives	25-3903	Appointment of person elected by party district convention pursuant to 25-3902.
	25-3902 25-321, 46-160	County party chair calls a convention of all precinct committee persons of the party in the district. Convention elects persons to fill the vacancy by secret ballot. Chair sends certificate of election to Governor.
State Board of Education	25-3902a, 25-1906	Appointment of person elected by party district convention.
District Court Judge (elected), District Magistrate Judge (elected)	25-312a	Governor appoints replacement.
District Court Judge (retention), District Magistrate Judge (retention)	20-2909	Governor appoints replacement. Chief Justice notifies nominating committee who sends 2-3 nominations to Governor.
<b>COUNTY OFFICES</b>		
	25-312	Appointment by Governor, generally-- Appointment by Governor if elected, unless otherwise provided by law --Also, non-affiliated office-holders that would otherwise be nominated by convention, appointed by the governor instead
County Commissioner	19-203	Appointment of district resident pursuant to 25-3902.

	25-3902	County party chair calls a convention of all committee persons of the party in the district. Convention elects person to fill the vacancy by secret ballot. Chair sends a certificate with replacement's name to Governor.
	19-203(c); 19-203a	Vacancy caused by increase in number of commissioners filled by special election on a date set by the Governor in consultation with the board of commissioners.
County Clerk	19-303	Appointment of elector following procedure for vacancy in House.
	25-3903	Appointment of person elected by district convention pursuant to 25-3902.
	25-3902	County chair calls a convention of all committee persons of the party in the district. Convention elects person to fill the vacancy by secret ballot. Chair sends a certificate with replacement's name to Governor.
County Treasurer	19-504	Appointment of elector following procedure for vacancy in House.
	25-3903	Appointment of person elected by district convention pursuant to 25-3902.
	25-3902	County chair calls a convention of all committee persons of the party in the district. Convention elects person to fill the vacancy by secret ballot. Chair sends certificate with replacement's name to Governor.
County Attorney	19-715	Appointment of person elected by district convention, pursuant to 25-3902 The district judges of the district where the vacancy occurs appoint a temporary until one can be appointed under 25-3902.
	25-3902	County chair calls a convention of all committee persons of the party in the district. Convention elects person to fill the vacancy by secret ballot. Chair sends certificate with replacement's name to Governor.
County Sheriff	19-804	Appointment following procedure for vacancy in House.
	25-3903	Appointment of person elected by district convention pursuant to 25-3902.
	25-3902	County chair calls a convention of all committee persons of the party in the district. Convention elects person to fill vacancy by secret ballot. Chair sends certificate with replacement's name to Governor.
Register of Deeds	19-1203 25-3902	Appointment of elector following procedure for vacancy in House.
Precinct person	25-3801	Appointment of county chair or by election at convention.
School Board Member	25-2022	Appointment by Board 15 days after publication.
	25-2022b	If less than 4 board members, governor appoints until the number again reaches 4 members. Then those 4 shall appoint the

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		remaining members within 6 months following the K.S.A. 25-2022 procedures.
Community College Board of Trustees Member	71-201(b)(15)	Appointment by Board 15 days after publication to fill remainder of term.
Township offices	80-201	Appointment.
	25-1606	Appointment by Board of County Commissioners.
<b>CITY OFFICES</b>		
City Manager form		
1 <sup>st</sup> Class		
2 <sup>nd</sup> Class		
3 <sup>rd</sup> Class		
Commission form		
1 <sup>st</sup> Class		Vacancy in Mayor's office or on commission is filled by commission within 10 days. If the commission cannot agree on a replacement, the city attorney will cast the decisive vote
2 <sup>nd</sup> Class	14-1305	Same.
3 <sup>rd</sup> Class	15-1405	Same.
Mayor-Council form		
1 <sup>st</sup> Class	13-513	Mayoral vacancy: President of council becomes mayor. Council elects from its membership a new president.  Council member vacancy: governing body appoints an elector of the ward where the vacancy occurred.
		Mayor appoints vacancy in council with consent of council.
		Vacancies in all elected offices are filled by Mayor with consent of council.
2 <sup>nd</sup> Class	14-204	President of council becomes Mayor if vacancy occurs in Mayor's office. Vacancy on council is filled by governing body of city.
3 <sup>rd</sup> Class	15-201	President of council becomes Mayor if vacancy occurs in Mayor's office. Mayor fills vacancy on council with consent of council.
	15-209	Vacancy in all other offices are filled by governing body of city.
Modified Mayor-City Council form	12-10a04	President of Council becomes Mayor if vacancy occurs in Mayor's office. Vacancy on council is filled by council.