
Conflicts of Interest and Incompatible Offices

The following is a booklet published by the Attorney General in June 1995. (This booklet has not been updated to cover any changes made by the 1996 General Assembly or thereafter).

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Incompatible Offices

and

Conflicts of Interest

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Foreword

Those who have been elected or appointed to serve as state, city, county, and district officers should be aware of the constitutional and statutory provisions, the case law, and the principles of the common law that affect their ability to hold other offices and to engage in contracts and other dealings with the governmental entities they have been elected or appointed to represent.

For many years the Office of the Attorney General attempted to provide that information by replying in writing to every public official who asked for guidance in the various situations that arise in the course of one's public duties. As the number of public officials has grown, however, and as interest in the subject has increased, it has become evident that a more effective means of communicating this important information is required. This booklet was written to fill that need.

This booklet provides guidance to state, county, city, and district officers so that the instances of incompatibilities and conflicts can be recognized and eliminated. Of course, no booklet can list every possible incompatibility and conflict. However, the legal concepts are not difficult to understand, and by describing the basic provisions and concepts, and providing selected examples of the prohibited and restricted activities, we hope to prepare the reader to apply these concepts to his or her own particular situation.

If questions remain regarding specific situations not covered or only partially covered in this booklet, the reader should first consult the attorney for the governmental entity involved. Frequently, those attorneys are aware of particular facts or circumstances that can affect the answer to the question. If that attorney is unable to answer the question, then a public official may submit the question to the Attorney General's Office.

We welcome comments and suggestions concerning this booklet or any other publication of the Attorney General's Office.

Part 1 Incompatible offices: statutory and constitutional provisions

1.1 In general

Under KRS 61.080(1) and Section 165 of the Constitution of Kentucky no person may, at the same time, be an officer of any city or county or an employee thereof and a state officer, a deputy state officer, or a member of the General Assembly.

Furthermore, KRS 61.080(4) and Section 165 of the Kentucky Constitution prohibit a person from holding two city offices at the same time in the same or different cities.

KRS 61.080(3) states that no person shall, at the same time, fill a county office and a city office.

1.2 Specific offices listed in KRS 61.080

KRS 61.080(2) provides that the offices of justice of the peace, county judge/executive, surveyor, sheriff, deputy sheriff, coroner, jailer, and clerk or deputy clerk of a court are incompatible, any one with any of the others. Also the offices of county judge/executive and county school superintendent are incompatible.

KRS 61.080(5) states that the following offices are incompatible with any other public office:

- member of the Public Service Commission;
- member of the Workmen's Compensation board;
- commissioner of the fiscal court in counties containing a city of the first class;
- county indexer;
- member of the legislative body in cities of the first class;
- mayor and member of the legislative body in cities of the second class; and
- mayor and member of council in cities of the fourth class.

1.3 What is a public office?

Since all city, county, and state offices cannot be listed in this booklet, reference is made to the case of *Howard v Saylor*, 305 Ky 504, 204 SW2d 815, 817 (1947), where the court quoted with approval from another case relative to the five elements that are indispensable in any position of public employment in order to make it a public office of a civil nature:

1. It must be created by the Constitution or by the Legislature or created by a municipality or other body through authority conferred by the Legislature;
2. it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
3. the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the Legislature or through legislative authority;
4. the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office, created or authorized by the Legislature, and by it placed under the general control of a superior officer or body;
5. it must have some permanency and continuity, and not be only temporary or occasional.

See also KRS 83A.010(10) which defines a city "officer" as follows:

"Officer" means any person elected to a position by the voters or any person appointed to a position which (a) is created by the Constitution, the General Assembly, or a city; (b) possesses a delegation of a portion of the sovereign power of government; (c) has powers and duties to be discharged which are conferred directly or by implication by the city; (d) has duties performed independently and without control of a superior power other than law; (e) has some permanency; (f) requires an official oath; (g) is assigned by a commission or other written authority; and (h) provides for an official bond if required by proper authority.

1.4 Specific public offices

To assist city and county officers in the application of the incompatible offices provisions, we have set forth partial lists of various positions and whether they constitute state, county, or city offices for purposes of the incompatible offices provisions. We have not attempted to present all-inclusive

listings. If the reader is confronted with the possibility of an incompatible situation he or she should *first* consult with the attorney for the appropriate governmental entity or, if that attorney is unable to answer the question, then with the Attorney General's Office.

1.4.1 State officers

A state officer may not serve as a county officer, county employee, city officer, or city employee. The following is a listing of some positions that are considered state offices. Following each office listed is a citation to the Opinion of the Attorney General in which the office is discussed.

Member of independent school board
OAG 77-39
Member of county board of education
OAG 76-687, OAG 77-697 and OAG 77-487
Superintendent of county school system
OAG 77-129 and OAG 77-107
Director of pupil personnel in county school system
OAG 75-414
Member of Kentucky General Assembly (House and Senate)
OAG 80-291

Property valuation administrator
OAG 77-162 and OAG 82-81
District court judge
OAG 77-186
Trial commissioner of district court
OAG 81-124 and OAG 80-266
Circuit court clerk and district court clerk and deputies
OAG 80-548, OAG 80-552 and OAG 81-124
Commonwealth's detective
OAG 78-708
Commonwealth's attorney and assistant commonwealth's attorney
OAG 81-214 and OAG 83-138
Presidential elector
OAG 80-291
State probation and parole officer
OAG 74-24
University safety and security officer
OAG 77-52

1.4.2 County officers

A county officer may not serve as a state officer, county employee (see section 3.3), or city officer. The following is a listing of some positions that are considered county offices. Following each office listed is a citation to the Opinion of the Attorney General or statute in which the office is discussed.

Member of a county board of health, OAG 77-39

Magistrate or justice of the peace, OAG 77-129 and OAG 80-263

County commissioner, OAG 76-533 and OAG 77-79

Member of county police force merit board, OAG 76-195

County election commissioner, KRS 117.035; OAG 80-263

Jailer and deputy jailer, OAG 83-466 and OAG 80-222

County attorney and assistant county attorney, OAG 77-779 and OAG 80-341

Coroner, OAG 73-807 and OAG 84-23

Constable and deputy constable, OAG 70-256 and OAG 74-784

County treasurer, OAG 77-162

Sheriff and deputy sheriff , OAG 78-622

County judge/executive, OAG 77-661

County police officer, OAG 80-576

County dog warden, OAG 70-431

1.4.3 City officers

A city officer may not serve as a county officer, city officer of another city, or city employee (see section 3.3). The following is a listing of some positions that are considered city offices. Following each office listed is a citation to the Opinion of the Attorney General or statute in which the office is discussed.

Auxiliary police officer under KRS 95.445, OAG 80-552

Member of recreational board established pursuant to KRS 97.030, OAG 77-539

Fire chief, OAG 77-682

Mayor, KRS 83A.040, KRS 83A.010(10)

Councilperson, KRS 83A.040, KRS 83A.010(10), KRS 83A.130

City commissioner, KRS 83A.040, KRS 83A.010(10), KRS 83A.140, KRS 83A.150

City administrative officer, KRS 83A.090

City clerk, KRS 83A.085

City manager, KRS 83A.150(7)

1.4.4 District board members and other public officers not covered by statutory or constitutional provisions

Board members of most statutorily created districts, such as fire and water districts, for purposes of the incompatible offices provisions are not considered to be state, city, or county officers. Such entities are political subdivisions of the Commonwealth. Their board members are not state, city, or county officers and are not subject to the incompatible offices provisions of KRS 61.080 and section 165 of the Constitution of Kentucky. See *Louisville Extension Water District v Diehl Pump & Supply Co.*, Ky, 246 SW2d 585 (1952); *City of Louisville Municipal Housing Commission v Public Housing Administration*, Ky, 261 SW2d 286 (1953); OAG 84-279, OAG 82-635, OAG 79-610, and OAG 71-462. These principles and concepts do not apply to school board members, who are state officers, but are not specifically dealt with in this booklet.

Officers of most joint city-county entities, while public officers, are not state, city or county officers for

purposes of the incompatible offices provisions of KRS 61.080 and section 165 of the Constitution of Kentucky. OAG 80-219.

1.4.5 Federal officers

Section 237 of the Constitution of Kentucky prohibits those persons holding an office under the Constitution and statutes of the United States from holding, at the same time, an office created by or existing pursuant to the statutory and constitutional provisions of the Commonwealth of Kentucky. One cannot serve concurrently as a federal officer and as a Kentucky state, county, or municipal officer. See *Commonwealth Ex Rel. Hancock v. Clark, Ky.*, 506 S.W.2d 503 (1974); OAG 80-234 and OAG 75-661.

1.5 Vacating office as a result of accepting an incompatible office

KRS 61.090 provides that the acceptance by one in office of another office or employment incompatible with the one he holds shall operate to vacate the first. Thus, the incompatibility does not exist until the person assumes the second office. See OAG 77-136.

In addition, the vacating of the office is not an automatic procedure and if the person refuses to vacate the office an ouster proceeding must be brought against that person. See OAG 84-23. In *Trimble County Fiscal Court v. Trimble County Board of Health, Ky.App.*, 587 S.W.2d 276, 281 (1979), the court said:

KRS 61.090 does not function automatically to oust one from office. If the office is not voluntarily vacated or abandoned, some notification and ouster proceedings are necessary.

1.6 Persons designated by statute to hold an office

Where a statute provides for the appointment of a specifically designated public officer to hold another public office, the public officer holds his second public office in an "ex officio" capacity which eliminates the possibility of a constitutional or statutory incompatibility. Thus, a public officer may be an ex officio holder of another public office without involving a dual office holding prohibited by the constitutional and statutory provisions of this state. See OAG 91-208.

1.7 State merit system employees

KRS 18A.140(4) forbids merit system employees to hold a partisan political office. Merit employees may "occupy a town or school district office if the office is one for which no compensation, other than a per diem payment, is provided and the election is on a nonpartisan basis." All school board offices, and some city offices, are nonpartisan; therefore state employees may be elected to those offices if they will receive only a per diem payment and not a salary.

Part 2. Conflicts of interest: statutory provisions

In order to determine whether a conflict of interest exists, it is necessary to examine both the statutory law enacted by the General Assembly and the common law created by court decisions. The following sections deal with statutory provisions. For information on common law conflicts of interest, see part 3 of this booklet.

The General Assembly has enacted several statutes that deal with conflicts of interest for various public officers and employees. The following sections provide a description of each of those statutes, followed by a summary of significant Opinions of the Attorney General construing the statute. Because many of the statutes contain similar provisions, an opinion construing one statute may provide guidance in construing another statute. Therefore the reader is advised to check all the summaries of opinions given in the following sections.

2.1 State officers and employees

KRS 11A.020 and .040 contain the following provisions regarding public servants (defined to mean any officer or employee in the executive branch of state government):

No public servant, by himself or through others, shall knowingly:

use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

use or attempt to use any means to influence a public agency in derogation of the state at large, or use his official position to obtain financial gain for himself or any members of his family;

use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised by any public agency.

No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than 5% of the total value thereof.

No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than 5%, or by any other person for his use or benefit or on his account, hold in whole or in part any contract, lease, sale or purchase with any state agency.

No public servant shall knowingly accept compensation, other than provided by law for public servants, for performance of his official duties without the prior approval of the Executive Branch Ethics Commission.

The foregoing provisions are among the more important elements of the Executive Branch Code of Ethics. The complete code appears in KRS chapter 11A. The brief description given here is by no means complete. For more information regarding the Executive Branch Code of Ethics, or to obtain an advisory opinion regarding the Executive Branch Code of Ethics, the reader should consult the Executive Branch Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601. Because the Executive Branch Ethics Commission is designated by statute as the agency responsible for interpreting the code, the Office of the Attorney General does not provide opinions interpreting the Executive Branch Code of Ethics.

2.2 County officers

2.2.1. Justices of the peace, county judge/executives and county attorneys not to be interested in public improvements

KRS 61.210 contains the following provisions:

No justice of the peace (magistrate), while he is a member of the fiscal court, shall, directly or indirectly:

become interested in or receive benefits or emoluments from any contract let by the fiscal court of his county relative to the building of roads or any internal improvements;

work or supervise work, for compensation, on any public road, bridge, culvert, fill, quarry pit or any other road work or internal improvement under any contract made with the fiscal court; or

furnish, for compensation, any material to the county to be used in the construction of any road or bridge or other internal improvement.

No county judge/executive or county attorney shall, directly or indirectly, receive any benefits or emoluments from, furnish any material or other thing of value to be used in, or be interested in any contract let by the fiscal court for the construction of any roads, bridges or parts thereof, or any other public or internal improvement.

Any officer who violates any of these provisions shall be fined not less than fifty nor more than 200 dollars or imprisoned in the county jail not less than ten nor more than forty days, or both, and shall forfeit his office.

2.2.2 Fiscal court members not to be interested in public improvements or claims against the county

KRS 61.220 contains the following provisions:

Any member of the fiscal court who becomes interested, directly or indirectly, in any contract for work to be done or material to be furnished for the county, or who becomes interested in any claim against the county shall be fined not less than five hundred nor more than five thousand dollars for each offense.

If any county judge/executive or justice of the peace is, by the same act, guilty of a violation of this section and KRS 61.210, he shall be punished as provided in KRS 61.210.

The wife of a county judge/executive and the wife of a magistrate may be hired by the fiscal court of which the county judge/executive and the magistrate are members without violating the conflict of interest provisions set forth in KRS 61.220. There is no reported Kentucky case dealing with the husband-wife relationship as it pertains to conflicts of interest. OAG 91-110.

The fiscal court cannot legally buy materials from a parts store operated in part by a magistrate of that fiscal court. OAG 84-270.

A county judge/executive who serves as a director of a bank in which county funds are deposited does not create a conflict of interest by such activity. OAG 82-134.

There is no statute prohibiting the fiscal court from purchasing supplies from a business operated by the county clerk as the county clerk is not among the officers named in KRS 61.210 and KRS 61.220 who are prohibited from having claims against the county. OAG 75-98 and OAG 76-9.

If the fiscal court is legally required, pursuant to KRS Chapter 424, to place the legal advertisements in a particular newspaper, the fact that a member of the fiscal court has a financial interest in that paper does not

result in a violation of KRS 61.210 and KRS 61.220. OAG 77-405.

2.2.3 Sheriff not to be interested in public improvements or claims against the state or county

KRS 61.230 contains the following provision:

Any sheriff or collector of taxes who becomes interested, directly or indirectly, in the construction of any public works or improvements in which the county or state is directly or indirectly interested, or on which he may be required to pay money, or who speculates in any claim against the county or state shall be fined not less than five hundred nor more than two thousand dollars for each offense.

2.2.4 County attorney and clerks not to buy claims against the county

KRS 61.240 contains the following provision:

Any county attorney, circuit clerk or deputy, or county clerk or deputy who purchases or speculates in any claim allowed by the fiscal court of his county shall be fined in a sum twice the amount purchased or speculated in by him.

2.2.5 Practicing law prohibited

KRS 61.098 contains the following provisions:

No county clerk or circuit clerk shall maintain a law partnership or association with an attorney at law.

No circuit clerk, county clerk, justice of the peace, constable, or recorder shall keep his office with that of an attorney at law.

2.3 Cities

2.3.1 General provisions

The 1994 regular session of the General Assembly enacted House Bill 875 (Acts 1994 chapter 379). This enactment created new provisions relative to municipal conflicts of interest and repealed statutes which had been in effect for many years. The repealed statutes include KRS 61.250, applicable to first class cities; KRS 61.260, applicable to second and third class cities; KRS 61.270, applicable to fourth class cities; and KRS 61.280, applicable to fifth and sixth class cities.

The 1994 legislation has been codified as KRS 61.251 and KRS 61.252.

KRS 61.251 defines the terms city agency, contract, and officer.

City agency means any board, commission, authority, nonstock corporation, or other entity created by a city.

Contract means any agreement for the sale, lease, or purchase of any interest in real or personal property or the providing of any service.

Officer means any person whether or not compensated, whether full time or part time, who is an elected or appointed officer of a city, or who is a member of the governing board of any city agency.

KRS 61.252 initially provides that no officer or employee of any city or city agency shall directly or

through others undertake, execute, hold, or enjoy, in whole or in part, any contract made, entered into, awarded, or granted by the officer's or employee's city or city agency.

2.3.2 Exceptions

The general prohibition against conflicts of interest for city officials now has several statutorily recognized exceptions.

KRS 61.252(1)(a) states that the prohibition shall not apply to contracts entered into before an elected officer filed as a candidate for city office, before an appointed officer was appointed to the office, or before an employee was hired by the city or city agency. If the contract is renewable, the prohibition shall apply to any renewal of the contract that occurs after the officer is elected or appointed, or after the employee is hired, unless the provisions of KRS 61.252(1)(c) are satisfied.

KRS 61.252(1)(b) provides that the prohibition does not apply if the contract is awarded after public notice and competitive bidding, unless the officer or employee is authorized to participate in establishing the contract specifications, or awarding, or managing the contract, in which case the provisions of KRS 61.252(1)(c) must be satisfied.

KRS 61.252(1)(c) states that the prohibition shall not apply if:

1. The specific nature of the contract transaction and the nature of the officer's or employee's interest in the contract are publicly disclosed at a meeting of the governing body of the city or city agency;
2. The disclosure is made a part of the official record of the governing body of the city or city agency before the contract is executed;
3. A finding is made by the governing body of the city or city agency that the contract with the officer or employee is in the best interests of the public and the city or city agency because of price, supply, or other specific reasons; and
4. The finding is made a part of the official record of the governing body of the city or city agency before the contract is executed.

2.3.3 Penalties

A violation of KRS 61.252 is a Class A misdemeanor, and upon conviction the court may void any contract entered into in violation of the statute. In addition, a violation of KRS 61.252 shall be grounds for removal from office or employment, in accordance with applicable provisions of law.

2.3.4 Removal of elected city officers

KRS 83A.040(9) and (10) contain the following provisions:

Except in cities of the first class, any elected officer, in case of misconduct, incapacity, or willful neglect in the performance of the duties of his office, may be removed from office by a unanimous vote of the members of the legislative body exclusive of any member to be removed, who shall not vote in the deliberation of his removal. No elected officer shall be removed without having been given the right to a full public hearing. The officer, if removed, shall have the right to appeal to the Circuit Court of the county and the appeal shall be on the record. No officer so removed shall be eligible to fill the office vacated before the expiration of the term to which originally elected.

Removal of an elected officer in cities of the first class shall be governed by the provisions of KRS 83.660.

2.4 Police and peace officers

KRS 61.310(2) contains the following provision:

No peace officer (including city and county police officers, sheriffs and deputy sheriffs, and constables) shall receive any compensation or remuneration, directly or indirectly, from any person for the performance of any service or duty except that he may be compensated for employment authorized by KRS 61.310(4) (employment during hours other than regular or scheduled duty hours).

2.5 Officer receiving profit on public funds

KRS 61.190, which codifies section 173 of the Constitution of Kentucky, contains the following provision:

Any public officer who shall receive, directly or indirectly, any interest, profits or perquisites arising from the use or loan of public funds in his hands, or to be raised through his agency, shall be guilty of a Class D felony. The judgment of conviction shall recite that the offender is disqualified to hold any public office thereafter.

Mere employment of a councilman's wife by the city would not constitute either a contract with the city as prohibited by the conflict of interest statutes or the receipt of profits from public funds prohibited by KRS 61.190 such as the receipt of kickbacks. OAG 76-76.

2.6 Local government officers, employees, and their spouses ionvolved in contracts for solid waste management facilities

KRS 61.097 contains the following provision:

No elected or nonelected local government officer or employee or the spouse of such person shall, directly or indirectly, receive any benefits or emoluments from, furnish any material or other thing of value to be used in, or be interested in, any contract let by waste management districts, counties, cities, or any combination thereof, for a solid waste management facility.

While a city council member could work for a solid waste management firm, that city could not, during the councilman's term of office, legally contract with the waste management firm of which the councilman is an officer or employee. OAG 91-103.

2.7 Special districts

2.7.1 Definition of special district

KRS 65.005(1)(a) contains the following provision:

"Special District" means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.

Examples of special districts are fire districts and water districts.

2.7.2 Removal of a member of the governing body of a special district

KRS 65.007(1) contains the following provision:

Unless otherwise provided by state law, an appointed member of the governing body of a special district may be removed from office by the appointing authority after a hearing with notice as required by KRS Chapter 424 for inefficiency, neglect of duty, malfeasance or conflict of interest.

Because the statute does not define "conflict of interest," the reader should consult Part 3, "Common law principles of incompatible offices and conflicts of interest."

There would be no conflict of interest where a water district deposited its funds in a checking account with the bank of which a water district commissioner is an officer. McCloud v City of Cadiz, KyApp, 548 SW2d 158 (1977). OAG 80-654.

2.8 Criminal provisions

2.8.1 Official misconduct in the first degree

KRS 522.020 contains the following provisions:

A public servant is guilty of official misconduct in the first degree when, with intent to obtain or confer a benefit or to injure another person or to deprive another person of a benefit, he knowingly:

commits an act relating to his office which constitutes an unauthorized exercise of his official functions; or

refrains from performing a duty imposed upon him by law or clearly inherent in the nature of his office; or

violates any statute or lawfully adopted rule or regulation relating to his office.

Official misconduct in the first degree is a Class A misdemeanor.

2.8.2 Official misconduct in the second degree

KRS 522.030 contains the following provisions:

A public servant is guilty of official misconduct in the second degree when he knowingly:

commits an act relating to his office which constitutes an unauthorized exercise of his official functions; or

refrains from performing a duty imposed upon him by law or clearly inherent in the nature of his office; or

violates any statute or lawfully adopted rule or regulation relating to his office.

Official misconduct in the second degree is a Class B misdemeanor.

2.8.3 Misuse of confidential information

KRS 522.040 contains the following provisions:

A public servant is guilty of misuse of confidential information when, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which not has been made public, he:

accepts or agrees to accept a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action; or

speculates or wagers on the basis of such information or official action; or

aids another to do any of the foregoing.

Misuse of confidential information is a Class D felony.

Part 3 Common Law Aspects of Incompatible Offices and Conflicts of Interest

Conflicts of interest exist pursuant to either statutory provisions or principles of the common law. Where they are statutory in nature the statutes specifically prohibit certain contractual situations as well as other designated activities and transactions. Where there are no controlling statutory provisions relative to conflicts of interest there can still be common law conflicts.

3.1 Common law conflicts of interest

In *Commonwealth ex rel. Vincent v Withers*, 266 Ky 29, 98 SW2d 24, 25 (1936), the court said:

It is a salutary doctrine that he who is interested with the business of others cannot be allowed to make such business an object of profit to himself. This is based upon principles of reason, of morality, and of public policy. These are principles of the common law and of equity which have been supplemented and made more emphatic by the foregoing and other statutory enactments. *Nunemacher v. City of Louisville*, 98 Ky. 334, 32 S.W. 1091, 17 Ky.Law Rep. 933. In their application and operation it is impossible to lay down any definite rules defining the nature of the interest of the office, or indicating the line between that which is proper and that which is unlawful. *In general, the disqualifying interest must be pecuniary or proprietary by which he stands to gain or lose something.* Falling within the principle are contracts with firms in which the member of the municipal body is a partner or a corporation of which he is an officer, or sometimes only a stockholder or employee. *Byrne & Speed Coal Co. v. City of Louisville*, 189 Ky. 346, 224 S.W. 883; *Douglas v. Pittman*, 239 Ky. 548, 39 S.W. (2d) 979. Furthermore, it is not material that the self-interest is only indirect or very small.

3.2 Invalidity of contracts tainted by conflict of interest

In 10A Eugene McQuillin, *The Law of Municipal Corporations* section 29.97 (Calaghan, 3d ed 1989), it is stated, "It is well settled that municipal officers cannot be interested in contracts of any character with the municipality." Furthermore, in that same section the following appears:

[I]t is generally held that whenever a public officer enters into a contract the execution of which may make it possible for his or her personal interests to become antagonistic to the officer's faithful discharge of a public duty, the contract will be held void as against public policy. It is the existence of such interest which is decisive, and not the actual effect or influence, if any, of the interest; if there is a potential conflict, the contract is invalid.

3.3 Common law principles regarding incompatible offices

The concept of common law incompatibility is set forth in the cases of *Hermann v Lampe*, 175 Ky 109, 194 SW 122, 126 (1917) and *Polley v Fortenberry*, 268 Ky 369, 105 SW2d 143 (1937). At pages 144-145 of its opinion in *Polley v Fortenberry* the court said in part:

The two employments not being incompatible under the Constitution or statute, the case turns on whether the two offices or employments are incompatible under the common law. As said in *Barkley v. Stockdell*, 252 Ky. 1, 66 S.W.2d 43, 44, "Aside from any specific constitutional or statutory prohibitions, incompatibility depends on the character and relation of the offices and not on the matter of physical inability to discharge the duties of both of them. The question is whether one office is subordinate to the other, or the performance of one interferes with the performance of the duties of the other, or whether the functions of the two are inherently inconsistent or repugnant, or whether the occupancy of both offices is detrimental to the public interest."

Even if the fiscal court does not exercise a supervisory role over a nonprofit corporation managing the county park system, there may be a common law incompatibility where the fiscal court member cannot perform his fiscal court duties with impartiality and honesty relative to the corporation. OAG 83-98.

A magistrate could not obtain a position with the county as a person cannot function at the same time as the employer and a subordinate employee. OAG 83-252.

The mayor of a city cannot continue to hold the position of executive director of the city's community development agency without creating a common law incompatibility and conflict of interest since he has the power to hire and fire the executive director. OAG 81-179.

Even if the conflict of interest statute does not prohibit a person from holding a city office and employment with that city at the same time, such an arrangement would create a common law conflict as the one position is subordinate to the other. OAG 79-143.