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ATTORNEY GENERAL OPINION NO. 2025-23

Andrew E. Werring
City Attorney
City of Valley Falls
417 Broadway St.
Valley Falls, Kansas 66088

Re: Crimes and Punishments—Crimes Affecting Public Trust—Official Misconduct

Synopsis: K.S.A. 21-6002(b)(2) provides that "[u]pon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment." Because the forfeiture is tied to the offense, and the offense is tied to the abuse of a specific position, the forfeiture is limited to the position held when the offense was committed. Cited herein: K.S.A. 21-6001; 21-6002.

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Dear Mr. Werring:

As City Attorney for Valley Falls, you ask about the reach of K.S.A. 21-6002(b)(2), which provides that "[u]pon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment." Specifically, you are concerned with whether the forfeiture is limited to the position that was abused to commit official misconduct when that position is retained through the time of conviction, or whether the forfeiture extends to *any* public office or employment held at the time of conviction, even if it is a new position. You raise this issue because the City Administrator of Valley Falls committed official

misconduct while employed in a prior position by Atchison County, but he was not convicted of the offense until after he began his current position.[1] As explained below, K.S.A. 21-6002(b)(2) applies only to the office or employment held when the official misconduct was committed, so it does not apply to the City Administrator's current position.

Your question turns on statutory interpretation. In this exercise, we look to the "plain and unambiguous" meaning of the relevant statutes.[2] We can neither "speculate" nor "read into the statute[s] language not readily found there."[3] Statutory interpretation must "reconcile the different [statutory] provisions so as to make them consistent, harmonious, and sensible."[4]

K.S.A. 21-6002(a) defines "official misconduct" as certain enumerated "acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment."[5] The offense is tied to the position held when the conduct is committed. Accordingly, the forfeiture required by subsection (b) is tied to the offense in subsection (a)—the official misconduct committed by the officer or employee in his position. Reading subsections (a) and (b) together, the forfeiture only applies to the position held at the time of the official misconduct. Therefore, if the officer or employee still holds the position when he is convicted, then the position is forfeited. The plain language of the statute, however, does not extend forfeiture to new positions.

A contrary interpretation would effectively amend the statute to divest an individual of any public office or employment held at the time of conviction even if he had done nothing improper in his new position. The statute does not contain sweeping, prospective punishment even though the Kansas Legislature has crafted and enacted such a punishment in other contexts. For example, K.S.A. 21-6001, which is in the same article as K.S.A. 21-6002, defines the offense of bribery. K.S.A. 21-6001(b) provides: "Upon conviction of bribery, a public official *shall forfeit* the person's office or employment. Notwithstanding an expungement of the conviction pursuant to K.S.A. 21-6614, and amendments thereto, any person convicted of bribery under the provisions of this section *shall be forever disqualified from holding public office or public employment in this state.*"[6] Had the Legislature intended for K.S.A. 21-6002(b)(2) to extend to future positions, it would have

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[1] *See generally State v. Lanter*, No. AT-2024-CR-000039 (Atchison Cnty., Kan., Dist. Ct.).
[2] *In re Est. of Strader*, 301 Kan. 50, 55, 339 P.3d 769 (2014) (internal quotation marks omitted).
[3] *Id.* (internal quotation marks omitted).
[4] *In re Marriage of Ross*, 245 Kan. 591, 584, 783 P.2d 331 (1989).
[5] The City Administrator was convicted under K.S.A. 21-6002(a)(1) for using a vehicle "exclusively" for his or another person's "private benefit or gain."
[6] (Emphases added.)

included language similar to K.S.A. 21-6001(b). But it did not, and it would be inappropriate to add statutory language to achieve such a reach.[7]

Combining the plain language of the statute and surveying other relevant statutory provisions, the forfeiture under K.S.A. 21-6002(b)(2) is limited to the position that was abused to commit official misconduct. The Legislature did not extend this punishment to subsequent positions.

In conclusion, because the City Administrator was convicted for official misconduct that he committed in a previous position, K.S.A. 21-6002(b)(2) does not require forfeiture of his current position.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Adam T. Steinhilber

Adam T. Steinhilber
Assistant Solicitor General

[7] *See In re Est. of Strader*, 301 Kan. at 55.