

DUPLICATED OFFICES: The same person may not at the same time be public administrator in a third class county and also be city attorney for a village within that county because of the incompatibility between the two offices.

May 6, 1949

Honorable William Barton
Missouri House of Representative
Captiol Building
Jefferson City, Missouri



Dear Sir:

This office is in receipt of your recent letter in which you request an official opinion upon the following question:

"May a Public Administrator in third class county serve as city attorney in Village without forfeiting his county office as Public Administrator?"

In answer to this question we would first call your attention to Article VII, Section 8 of the new Constitution, which sets forth the general qualifications for public office. That section states:

"No person shall be elected or appointed to any civil or military office in this state who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment, except that the residence in this state shall not be necessary in cases of appointment to administrative positions requiring technical or specialized skill or knowledge."

From the above it will be observed that there is no general disqualification of one person holding more than one office. There are, however, disqualifications in certain instances, as is indicated in Section 9 of Article VII of the new Constitution. This section states:

"No person holding an office of profit under the United States shall hold any office of profit in this state, members of the organized militia or of the reserve corps excepted."

A further disqualification is set forth in Article III, Section 12 of the new Constitution, this section states:

"No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected nor senator or representative shall accept any appointive office or employment under this state which is created or the emoluments of which are increased during such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public."

The old (1875) Constitution had a restriction set forth in Article VI, Section 18 which section states that no person could hold two offices in cities or counties having more than two hundred thousand inhabitants. This section, of course, would never have been applicable to your situation, and in the new Constitution it was omitted altogether.

It will thus be seen that there is no specific statutory prohibition against the same individual holding the offices of public administrator of a county and city attorney of a village within that county. However, there is a further test that must be applied to these situations even where there is no statutory prohibition. That test is whether the duties of the offices held by one individual are incompatible with each other. A very clear statement regarding this matter is made by the court in the case of State ex rel. v. Bus, 135 Mo. 325. Here the court said, 1.c. 338, 339:

"The remaining inquiry is whether the duties of the office of deputy sheriff and those of school director are so inconsistent and incompatible as to render it improper that respondent should hold both at the same time. At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical

inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two; some conflict in the duties required of the officers, as where one has some supervision of the other, is required to deal with, control, or assist him.

"It was said by Judge Folger in *People ex rel. v. Green*, 58 N.Y. loc. cit. 304: 'Where one office is not subordinate to the other, not the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. Thus, a man may not be landlord and tenant of the same premises. He may be landlord of one farm and tenant of another, though he may not at the same hour be able to do the duty of each relation. The offices must subordinate, one the other, and they must, per se, have the right to interfere, one with the other, before they are incompatible at common law."

In the specific case which you present to us we must therefore look at the duties of the office of public administrator of a county and those of city attorney of a village in that county, and try to determine whether situations could or would be apt to arise in which it would be difficult or impossible for the same person to fully and impartially exercise the duties of these two offices at the same time. It is the opinion of this department that such situations could arise where the same person simultaneously held the office of public administrator of a county and the office of city attorney of a village within that county.

As one illustration of such a situation let us assume that a person dies in a county where the same individual is both public administrator for the county and city attorney for a village within that county. Let us assume further that the deceased person dies testate; that under his will he left property to the village of which the public administrator is city attorney; that

under his will he names an executor who himself dies before administration can be started upon the estate of the testator. In such a situation, assuming that the deceased testator had no other relative living, the public administrator would take charge of the administration of his estate. As city attorney of the village to which a bequest had been made under the will of the deceased it would be his duty to try to get for the village the property bequeathed it. As public administrator it would be his duty to contest this bequest if there was ambiguity in the will, or any other question present regarding the validity of the will, or if there was any question whether the village had the power to take such a bequest. In this situation, obviously, there would be a conflict of duty between the city attorney and the public administrator and it would be impossible for the same individual holding both offices to do his full duty by the village and by the county.

Let us assume another fact situation in respect to this matter of incompatibility. Let us assume that a person dies intestate with no heirs. The village of which the public administrator is city attorney has a tax claim against personal property of the deceased. As city attorney it would be his duty to try to collect these taxes. But if there was any question regarding the validity of the assessment upon which this village tax claim was founded, or any question whether a part or all of these taxes had already been paid, or any other one of numerous questions which might arise in this respect, as public administrator it would be his duty to resist payment of these taxes to the village. Here, as in the above, it seems plain that under this assumed condition of facts it would be impossible for one person holding at the same time the office of public administrator of a county and the office of city attorney of the village within that county to fully discharge the duties of both offices.

Numerous other similar illustrations showing the incompatibility between these two offices could be given, but we believe that the two cited above are sufficient to illustrate this point.

CONCLUSION

It is the conclusion of this department that the same person may not at the same time be public administrator in a third class county and also be city attorney for a village within that county because of the incompatibility between the two offices.

APPROVED:

Respectfully submitted,

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