

OFFICERS: Any state, county or city officer is eligible as federal agent under the state tire rationing administrator if they serve without pay.

December 29, 1941

Mr. Hugh Stephens, Vice-Chairman
Missouri State Council of Defense
State Office Building
Jefferson City, Missouri

12-30



Dear Sir:

We are in receipt of your request for an opinion from this department under date of December 29, 1941, which is as follows:

"The State Council of Defense has been directed by the U. S. Office of Price Administration to supervise the rationing of tires through means of local tire rationing boards.

"There will be a meeting of the Executive Committee of the Council in Jefferson City tomorrow morning to perfect details and give out instructions. I would like your opinion as to what persons are eligible or not eligible to serve as members of said local rationing boards.

"Section VII, paragraph C, of instructions for rationing reads as follows: 'Each member of the local Tire Rationing Board must take the oath of federal office and become a federal agent, without compensation, to whom the Price Administrator may delegate authority. As in the case of a State Tire Rationing Administrator, the chairman of the local defense council will make sure before selecting members of the tire board that such persons are eligible under state law and local regulation to be such a federal agent.'

"In the selection of approximately ten members of each local council per county, it may happen that there will be included some county or local officers or members of the General Assembly, county extension agents, etc.

"If you can give us an opinion as to eligibility for this service and let us have it by tomorrow morning, it would be appreciated."

There are only three sections of the Constitution applicable to your request. The first section is Section 12, Article IV of the Constitution of Missouri which provides as follows:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office under this State, or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof (militia officers, justices of the peace and notaries public excepted), shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such office or seat in either house of Congress."

This section is only applicable to the extent that it would prohibit a person from qualifying as member of the General Assembly of this state if he held a lucrative office under the United States.

I am presuming under your request that the members selected as members of the Tire Rationing Board serve the government without pay, that is, payment of a salary that would amount to an inadequate compensation for his services. In the State of Indiana this question was passed upon in the case of State v. Kirk, 44 Ind. 401, 405, 15 Am. Rep.

239, where the court said:

"Const. art. 2, section 9, declares that no person holding a lucrative office or appointment under the United States or under this state shall be eligible to a seat in the General Assembly, nor shall any person hold more than one lucrative office at the same time, except as in the constitution expressly provided, etc. Held, that the term 'lucrative,' as defined by Webster, means 'yielding lucre; gainful; profitable; making increase of money or goods; as a lucrative trade, lucrative business or office'--and that the test was whether the office yielded a pay supposed to be an adequate compensation for the services or duties performed. The lucrativeness of an office, which is its net profits, does not depend on the amount of compensation affixed to it, but expenses incident to an office with a high salary may render it less lucrative in this latter sense than other offices having a much lower rate of compensation, but the office is nevertheless a lucrative one."

In such a case and under Section 12, supra, an appointee to the Tire Board would still be eligible to accept an office in the General Assembly for the reason that as an appointee of the Tire Board he is not holding any lucrative office under the United States.

Section 11, 46 Corpus Juris, page 927, states the rule as to office of profit and honorary office wherein it says:

"Offices are classified with reference to compensation as offices of profit and honorary offices. An office of profit, or a lucrative office, is one to which is attached a compensation for

services rendered. An honorary office is one to which are attached no fees, perquisites, profits, or salary.* * * * *

Section 52, 46 Corpus Juris, page 945, further states the rule as follows:

"The holding of more than one office is quite commonly prohibited by constitutional or statutory provisions, as, for example, by a provision that the same person shall not hold two lucrative offices, or offices of profit or of trust or profit, or of emolument, or that one holding a lucrative office under the United States or any other power shall not be eligible to any civil office of profit under the state, or that one holding an office of honor under the United States shall not hold any such office under the state. Such provisions are ordinarily held not to affect positions which are not, strictly speaking, offices. But it is competent, however, for the legislature to prescribe a new meaning for the term 'office' as used in a prohibition against the holding of more than one lucrative office, or to apply it to a position not formerly within the scope of the word. Such a prohibition does not apply to temporary appointments for reasons of necessity. The fact that an officer after termination of his term of office has extended authority to exercise some official functions in the discharge of an uncompleted duty does not render him ineligible to another office."

Another section of the Constitution applicable to your request is Section 4 of Article XIV of the Constitution which provides as follows:

"No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this State."

Under this section if the members appointed to the Tire Board receive compensation commensurable with their duties, then they would be ineligible to hold any office of profit under this state.

Another section applicable to your request is Section 18 of Article IX of the Constitution of Missouri which provides as follows:

"In cities or counties having more than two hundred thousand inhabitants, no person shall, at the same time, be a state officer and an officer of any county, city or other municipality; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities; but this section shall not apply to notaries public, justices of the peace or officers of the militia."

This section only applies to state officers, county officers and city officers filling more than one office, but as we understand the state tire rationing administrator and his appointees are considered and will be officers of the United States. We quote this section for the reason that in your request you refer to local officers.

CONCLUSION

In view of the above authorities it is the opinion of this department that a county officer, local officer, members of the General Assembly or county extension agents and other officers of the state and county are eligible under the state law and local regulations to be a federal agent and be appointed by the state tire rationing administrator, chairman of the local defense council and other officers without jeopardizing their present office in any manner.

We base this opinion on the fact that the federal

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agent so appointed is not holding an office of profit or
a lucrative office under the United States.

Respectfully submitted

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APPROVED:

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