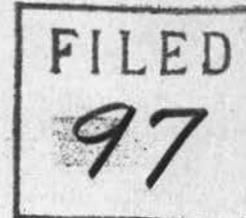


PUBLIC OFFICERS: Local deputy commissioner of the motor vehicle registration department may be appointed deputy sheriff.

May 31, 1949

Mr. Homer F. Williams
Prosecuting Attorney,
Bollinger County
Marble Hill, Missouri



Dear Mr. Williams:

This will acknowledge receipt of your request for an official opinion of this department, which letter reads as follows:

"I would like your opinion as to whether a deputy employee of the Motor Vehicle Registration Department, that is our Local man who has charge of the issuance of Licenses for Automobiles in this county, can also be a Deputy Sheriff in the county?"

There is no constitutional or statutory prohibition against the appointment of an individual as deputy sheriff in a certain county, which individual is at the same time the deputy commissioner of the motor vehicle registration department in that county. There is however the common law rule that a person may not hold at the same time two public offices which are incompatible and inconsistent. In such cases, acceptance of the second incompatible office operates as a resignation of the first. However, this rule is inoperative where one of the alleged public offices is in reality a mere employment.

That a deputy sheriff is a public officer has long been established; see State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636. The question of whether or not a deputy commissioner of the motor vehicle registration department is a public officer has never been before the courts. However, assuming that a deputy commissioner of the motor vehicle registration department is a public officer, there would still be no incompatibility between such office and that of deputy sheriff.

The common law principle of incompatible public offices was stated in State ex rel. Walker v. Bus, supra, at l.c. 338:

"* * *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."

The duties of the local deputy commissioner of the motor vehicle registration department are limited and are ministerial in character. These duties consist of the issuance of motor vehicle license plates, collection of motor vehicle registration fees, issuance of driver's license applications and collection of fees therefor, etc. No instance can be conceived where he would be required to exercise any supervision over or assist the office of deputy sheriff.

Nor would the office of deputy sheriff come in conflict with that of deputy commissioner. The only time any inconsistency would arise would be where the deputy sheriff would be required to serve process on the deputy commissioner of the motor vehicle registration department as such. This has been held, in State ex rel Walker v. Bus, supra, to be too remote a contingency to make the offices of deputy sheriff and school director incompatible. The court, at l.c. 339, ruled that:

"We are unable to discover the least incompatibility or inconsistency in the public functions of these two offices, or where they could by possibility come in conflict or antagonism, unless the deputy sheriff should be required to serve process upon a director as such. We do not think such a remote contingency sufficient to create an incompatibility. The functions of the two offices should be inherently inconsistent and repugnant. State ex rel. v. Goff, 15 R.I. 507."

We are, therefore, of the opinion that even if a deputy commissioner of the motor vehicle registration department is a public officer and not a mere employee, this office would not be inconsistent and incompatible with that of deputy sheriff.

Mr. Homer F. Williams

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CONCLUSION

It is therefore the opinion of this department that the local deputy commissioner of the motor vehicle registration department in a certain county may also be appointed as deputy sheriff of that county. Acceptance of such appointment would not operate as a resignation as deputy commissioner.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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RHV:mw