

OFFICERS: The offices of mayor of a fourth class city and director of an incorporated fire district are compatible.



May 5, 1952

5-6-52

Honorable Stanley Wallach
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Attention: Honorable L. L. Bornschein,
Assistant Prosecuting Attorney.

Dear Mr. Wallach:

This will be the opinion you recently requested on the subject of whether an elective official of a city of the fourth class, the mayor in the case you cite, can legally hold two elective offices, the other elective office being that of a director of an incorporated fire district, and receive compensation from each respective position.

Your letter requesting the opinion of this department reads as follows:

"We have request for opinion from a local Municipality, a 4th Class City, on the subject of whether or not an elective official of such city, in this case the Mayor, can legally hold two elective offices, receiving compensation from each respective position; the other office involved is that of an elected Director of an incorporated Fire District (a political subdivision).

"In this connection we note that the 1875 Constitution prohibited same but this was omitted in the 1945 Constitution. Further, there is nothing provided in the general or special laws governing Cities of the 4th Class as pertains to this subject.

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"We are hence of the opinion that the 1945 Constitution having omitted such restrictions that there is presently no limitation thereto nor legislation to date governing, and that person referred to herein can legally hold the two offices mentioned.

"Kindly advise and oblige."

You state in your letter that it is your opinion that, since neither our present Constitution nor the statutes of this State prohibit one person from holding two such elective offices at the same time, such person can legally hold the two offices named. We agree with you under the following cited and quoted authorities:

Section 18 of Article IX of the Constitution of this State, 1875, expressly prohibited officers in cities or counties of more than 200,000 inhabitants from holding two municipal offices at the same time. Said Section 18 read 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."

Article VII of our present Constitution deals with the subject of public officers and the requirements necessary to the holding of public office, but nowhere does Article VII carry over or adopt any of the provisions of said Section 18 of Article IX of the 1875 Constitution.

Article VI of the present Constitution of this State prescribes the fundamental law of the State respecting "local" government. In many of its sections said Article VI incorporates and adopts various other terms and provisions of Article IX of the 1875 Constitution, but no reference is made to nor is

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any part of said Section 18 of Article IX of the said former Constitution of this State incorporated in said Article VI of our Constitution of 1945. The present Constitution ignores entirely the subjects and the provisions contained in Section 18, Article IX of the 1875 Constitution.

We have carefully searched legislative enactments since the adoption of our present Constitution respecting cities of the fourth class, but fail to find any statute, either general or special, relating to the government of cities of the fourth class by which an elective officer of cities of the fourth class is prohibited from holding two offices and receiving compensation from both positions at the same time.

It seems, therefore, conclusive that the holding of two offices by an elective officer of a city of the fourth class in this State is not prohibited or limited by either the present Constitution or the statutes of this State.

The holding of two offices at the same time by the same person was not prohibited by the common law. 46 C.J. 941, 942, states this rule as follows:

"At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. * * * ."

The question arises here whether there is incompatibility between the performance of the duties of mayor of a city of the fourth class and the duties of a director of an incorporated fire district in a county of the first class. An incorporated fire district in St. Louis County, a county of the first class, is a political subdivision of the State by reason of the provisions of Sections 1 and 15 of Article X of the present Constitution of this State which when read together provide that the term "other political subdivision" shall be construed to include a "public corporation or public quasi-corporation having the power to tax." Section 321.230, RSMo 1949, under the subject of "Fire Protection Districts in Class One Counties", imposing upon such fire districts

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the power to tax, reads as follows:

"For the purpose of providing revenue for such districts, the board shall have the power and authority to order the levy and collection of ad valorem taxes on and against all taxable tangible property within the district, and to make timely demand and to sue for and collect any and all other taxes, contributions or allocations to which the district may be entitled."

Such incorporated fire district is not connected in any way whatsoever as a political entity with a city of the fourth class as a municipal entity.

A fire protection district is governed by a board of directors under the provisions of Chapter 231, RSMo 1949. The directors of such a district are elective officers. The first board of directors is elected at the time of the organization of the district to serve during deferred numbered years. Subsequent members of the board are elected thereafter as provided in Section 321.210, RSMo, 1949, to also serve for deferred numbered years. The several sections of said Chapter 231 provide the scheme and plan of creating, maintaining and operating a fire protection district, financially and from a governmental standpoint, having as its sole objective the protection of the district against fire by any available means.

The office of mayor of a city of the fourth class under Section 79.050, Chapter 79, RSMo 1949, is an elective office. The duties and powers imposed upon the mayor of a city of the fourth class in conjunction with the board of aldermen of such city are defined, generally, in Section 79.110, RSMo 1949. There are divers other specific duties imposed upon the mayor by the several other sections of Chapter 79 and of Chapter 98, RSMo 1949, respecting the government of a city of the fourth class. Such sections are too numerous and too lengthy to otherwise be referred to here. They will readily be found in the above-numbered chapters of the revision of our statutes for 1949.

Study of the sections of Chapter 321, relating to the organization and operation of fire protection districts and the duties thereunder imposed upon the members of the board of directors of such districts, and statutes providing the duties and powers imposed upon mayors of cities of the

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fourth class in St. Louis County, Missouri, shows conclusively that there is no conflict or incompatibility in the performance of the duties of a mayor of a city of the fourth class and a director of a fire protection district in St. Louis County, Missouri. Neither of these corporate bodies would have any control or supervision over each other in any of their separate corporate affairs.

Our Supreme Court passed upon this question in the case of State ex rel. vs. Bus, 135 Mo. 325. In support of the text in 46 C.J. 941, 942, supra, in a case where the question before the Court was whether the duties of the office of deputy sheriff and those of a school director were so inconsistent and incompatible as to render it improper for one person (the respondent in an ouster proceeding in that case) to hold both offices. The Court, holding that the duties of the two offices were not incompatible and could be performed by the same person at the same time, stating the common law rule at l.c. 338, said:

"* * *. 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."

Considering the premises and the authorities cited and quoted, the duties of a mayor in a fourth class city and the duties of a director of a fire protection district in St. Louis County, are not inconsistent or incompatible and can be both held by the same person at the same time, and that such person may receive compensation from each position while so occupying such offices.

CONCLUSION

It is, therefore, the opinion of this department that the office of mayor of a city of the fourth class in

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St. Louis County, Missouri, and the office of director of a fire protection district in St. Louis County, Missouri, may legally be held by the same person at the same time, and that such person so holding such elective offices may receive compensation from each respective position.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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