

OFFICES:

INCOMPATIBILITY:

In a fourth class city under the mayor-council form of government, so far as state law is concerned,

the same individual may simultaneously hold the position of water, street, and sewer commissioner and the position of city clerk; the position of water, street, and sewer commissioner, and the position of city treasurer; and the position of water, street, and sewer commissioner, and the position of city collector, but that the holding of the positions of city clerk, city treasurer, and city collector, or of any two of these three offices, by the same persons at the same time would be incompatible.

June 10, 1955

Honorable J. Ellis Dodds
Representative
Pulaski County
Waynesville, Missouri



Dear Sir:

Your recent request for an official opinion reads as follows:

"I would like to have an official opinion as to whether in a city of the fourth class, which has the mayor-council form of government, it is proper for one individual to hold the following positions at the same time: Water, street and sewer commissioner; city clerk; city treasurer; city tax collector."

The legal principle applicable in the instant situation is one which is so clearly established in Missouri as not to require establishment by us here. It is, that in the absence of a statutory or constitutional prohibition, there is no limit to the number of offices which an individual may hold simultaneously, provided that there is no incompatibility between any of the offices so held.

"Incompatibility" has been defined, in the case of State ex rel. Walker, Attorney General, vs. Bus, 135 Mo. 327, l.c. 338, 36 S.W.636, as follows:

"* * * 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 term has been further defined as follows:

"* * * They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant so that, because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both. It is not an essential element of incompatibility of offices at common law that the clash of duty should exist in all or in the greater part of the official functions. If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties may conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible. * * *" 42 Am. Jur., Public Officers, Sec. 70.

With those principles in mind let us now examine the duties of the four city offices enumerated by you, from the viewpoint of their mutual compatibility, and of any statutes or constitutional provisions which may affect them.

The first office listed by you is "water, street, and sewer commissioner." Since writing your letter requesting an official opinion, you have verbally informed us that the above is an office created by the city council of your town; that the person handling it has general oversight of the waterworks, streets, and sewers, and makes more or less regular reports to the city council regarding them. How much actual authority this person has over the waterworks, streets, and sewers is not too clear, but it appears that he acts only in a supervisory or advisory capacity, and that his main job is purely administrative. It does not appear that he is authorized to expend, collect or handle city funds in this job. You have informed us that he is not one of the three "waterworks commissioners" provided for by Section 91.260, RSMo 1949.

The second position which is listed by you is, "city clerk." Applicable to that position in a fourth class city is Section 79.320, RSMo 1949, which reads:

"The board of alderman shall elect a clerk for such board, to be known as 'the city clerk,' whose duties and term of office shall be fixed by ordinance. Among other things, the city clerk shall keep a journal of the proceedings of the board of aldermen. He shall safely and properly keep all the records and papers belonging to the city which may be entrusted to his care; he shall be the general accountant of the city; he is hereby empowered to administer official oaths and oaths to persons certifying to demands or claims against the city."

What duties may have been placed upon the city clerk by the ordinances of your town we do not know, but so far as appears from the statute we do not see any incompatibility between the position of "water, street, and sewer commissioner" and "city clerk."

The third office listed by you is "city treasurer." Applicable to this position in a fourth class city is Section 79.300, RSMo 1949, which reads:

"The treasurer shall receive and safely keep all moneys, warrants, books, bonds and obligations entrusted to his care, and shall pay over all moneys, bonds or other obligations of the city on warrants or orders, duly drawn, passed or ordered by the board of aldermen, and signed by the mayor and attested by the city clerk, and having the seal of the city affixed thereto, and not otherwise; and shall perform such other duties as may be required of him by ordinance. Before entering upon the duties of his office he shall give bond in such sum as may be required by ordinance."

We see no incompatibility between the office of treasury and the position of "water, street, and sewer commissioner," but we do see incompatibility between the office of treasurer and the office of "city clerk."

Section 79.320, supra, states that the city clerk shall, among other duties "be the general accountant of the city." As general accountant it would be his routine duty to accept and

examine the report of the city treasurer, and, if mistakes or discrepancies were noted, to call upon the city treasurer for an explanation and clarification. As accountant, the city clerk would be required as a part of his duty to audit the books of the city treasurer if called upon by the city council to do so. If the same person held both offices he would be in the position of accepting from himself a report prepared by himself, of examining and approving it, and of auditing his own books if requested by the city council to do so.

We believe that the incompatibility involved in this situation is so evident as not to require further elaboration.

The fourth office listed by you is "city tax collector." Applicable to this position in a fourth class city is Section 95.360, RSMo 1949, which reads:

"It shall be the duty of the city collector to pay into the treasury, monthly, all moneys received by him from all sources which may be levied by law or ordinance; also, all licenses of every description authorized by law to be collected, and all moneys belonging to the city which may come into his hands. He shall give such bond and perform such duties as may be required of him by ordinance."

This office seems to be compatible with that of water, street, and sewer commissioner. We do not believe it to be compatible with that of city clerk, since the clerk would have the custody of the bond of the collector and the reports of the collector. No doubt he would have to attest both the bond and the reports.

Furthermore, here, as in the case of the city treasurer, the relationship between the office of the city clerk and city collector is very close. The city clerk charges the collector's books out to him, receives them back from the collector, receives the settlement of the collector, and in his capacity as general accountant of the city examines the books of the collector. Here also, if requested by the city council to do so, he would be required to audit the books of the collector. In this situation likewise the incompatibility is so evident as not to need elaboration.

We believe it to be clear that the office of the city collector is incompatible with that of city treasurer, since the same person in his capacity as collector, would pay to himself, in his capacity as treasurer, "all monies received by him from all sources," monthly. If the same person occupied both offices it seems obvious that the interests might be conflicting, and that the duties might easily be evaded.

We believe that, if it had been the intent of the Legislature that all of these offices be filled by the same person, they would have been so consolidated. We believe further that one reason for their separation was that individual office holders would provide a check and balance upon other office holders, thereby making more probable the honest and efficient discharge of the functions of government. It would seem to us therefore, that in your situation the same person could at the same time, be "water, street, and sewer commissioner" and "city clerk;" "water, street, and sewer commissioner" and "city treasurer;" "water, street, and sewer commissioner" and "city collector," but that the holding of the offices of city, city treasurer, and city collector, or of any two of them, by the same individual at the same time, would be incompatible.

As being illustrative of the matter involved in incompatibility, we enclose a copy of an opinion rendered by this department May 6, 1949, to Honorable William Barton, Representative of Montgomery County; also a copy of an opinion rendered July 1, 1948 to Honorable Lane Harlan, Prosecuting Attorney of Cooper⁴⁹ County, and also a copy of an opinion rendered January 20, 19~~39~~⁴⁹, to Honorable W. A. Despain, Prosecuting Attorney of Shannon County.

CONCLUSION

It is the opinion of this department that in a fourth class city under the mayor-council form of government, so far as state law is concerned, the same individual may simultaneously hold the position of water, street, and sewer commissioner and the position of city clerk; the position of water, street, and sewer commissioner, and the position of city treasurer; the position of water, street, and sewer commissioner, and the position city collector, but that the holding of the positions of city clerk, city treasurer, and city collector, or any two of these three offices, by the same person at the same time would be incompatible.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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