

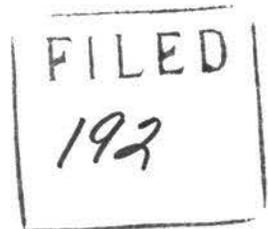
OFFICERS:  
CITY OFFICERS:  
COUNTY OFFICERS:  
CITY ASSESSOR:  
COUNTY ASSESSOR:  
CONFLICT OF INTEREST:

1. A person whose name is written in on a ballot at the general election for city assessor in a third class city who receives a majority of the votes cast is elected city assessor. 2. The county assessor in a county of the third class can also hold the office of city assessor in a third class city.

OPINION NO. 192

August 16, 1972

Honorable Zane White  
Prosecuting Attorney  
Phelps County Courthouse  
Rolla, Missouri 65401



Dear Mr. White:

This is in response to your request for an opinion from this office as follows:

"I request an Attorney General Opinion as to whether or not the County Assessor in a County of a third class can also hold the office of City Assessor in a City of a third class?

"Facts are that no one filed for the office of City Assessor of the City of Rolla. The County Assessor of Phelps County received the largest number of write-in votes and has requested this opinion to see whether or not he may hold both offices."

You state no candidate filed for the office of city assessor of Rolla and the county assessor received the largest number of write-in votes for city assessor.

Section 77.370, RSMo, provides for the city assessor of a third class city to be elected.

The first question is whether it is legal for a voter in an election for city assessor to write on the ballot the name of the person he chooses for such public office who is not a candidate and whether such vote should be counted for the person whose name is written on the ballot.

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In *Kasten v. Guth*, 375 S.W.2d 110 (Mo. 1964) the court held the person who received the most votes for county superintendent of schools, although his name was written in, was elected as county superintendent of schools. In discussing this question, the court stated, l.c. 115:

"In 29 C.J.S. Elections § 180, pp. 263, 265, it is stated that 'a candidate for public office is generally entitled to have his name written upon the official ballot by voters who desire to support him as their choice, although he has not been nominated by any convention, caucus, or meeting, and under most statutes, when an elector desires to vote for a person whose name is not on the ballot he may do so by writing his name on the ballot in an appropriate place, notwithstanding the person whose name is thus written in was not eligible to have his name printed on the ballot. \* \* \*'  
. . ."

It is our opinion that, under the facts as submitted, the county assessor who received the largest number of votes for city assessor was elected as city assessor.

The question now arises as to whether the county assessor of Phelps County, a third class county, can qualify for the office of city assessor of a third class city and thus hold both offices if otherwise qualified.

We know of no specific statute or constitutional provision that would prohibit the simultaneously holding of the office of assessor of a third class county and the office of city assessor of a third class city; and, therefore, we must turn to the common law rule to determine this question.

The common law rule was stated in the case of *State ex rel. Walker v. Buss*, 135 Mo. 325, 36 S.W. 636, 639-640 (1896) 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 others, is required to deal with, control, or assist him.

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It was said by Judge Folger (People v. Green, 58 N. Y. 295): 'Where one office is not subordinate to the other, nor 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 towards 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.' . . ."

We must examine statutes relating to the duties of the two offices in question to determine whether there is such an inconsistency in the functions of the office as to render them incompatible. Section 53.010, RSMo, provides that in each county of this state, except those under township organization, shall elect a county assessor.

Section 53.030, RSMo, provides that each assessor shall assess all of the real and tangible personal property in the county of which he assesses at what he believes to be the actual cash value.

Section 94.010, RSMo, applies to the assessment of property in third class cities. It provides as follows:

"1. Except as hereinafter provided, in assessing property, both real and personal, in cities of the third class, the city assessor shall, jointly with the county or township assessor, assess all property in such city, and such assessment, as made by the city assessor and county or township assessor jointly, and after the same has been passed upon by the board of equalization, as herein provided for, shall be taken as the basis from which the city council shall make the levy for city purposes; and for

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the purpose of giving cities of the third class representation on the county board of equalization, when said board is sitting for the purpose of equalizing the assessment on such city property, the mayor and city assessor shall sit with the county board of equalization when the said board is passing upon the assessment of such city property, and shall each have a vote in said board, and they shall be paid for such service the same amount per day and out of the same fund as other members of such board of equalization.

"2. The assessment of city property as made by the city and county assessor shall conform to each other, and after such board of equalization has passed upon such assessment and equalized the same, the city assessor's book shall be corrected in red ink in accordance with the changes made by the board of equalization, and so certified by said board, and then returned to the city council."

Under this statute the city assessor in a third class city is required to, jointly with the county assessor, assess all the property in such city, and such assessment, as made by the city assessor and county assessor jointly, and after the same has been passed upon by the board of equalization, be taken as the basis from which the city council shall make the levy for city purposes. It requires the assessment of city property as made by the city and county assessors shall be the same.

It is our view that there is no incompatibility existing between these two offices. Neither office is superior to the other nor does one office have supervision over the other. In fact, under this statute, the assessed value of the property for city purposes must be the same as the assessed value of property for county purposes. Therefore, it is our view that the county assessor in a county of the third class can also hold the office of city assessor in a city of the third class.

#### CONCLUSION

It is the opinion of this office that:

1. A person whose name is written in on a ballot at the general election for city assessor in a third class city who receives a majority of the votes cast is elected city assessor.

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2. The county assessor in a county of the third class can also hold the office of city assessor in a third class city.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, sweeping initial "J".

JOHN C. DANFORTH  
Attorney General