

COUNTY TREASURER: County treasurer cannot serve as deputy to County Collector while remaining Treasurer.

8-30

August 25, 1934.



Hon. Walter W. Biehle,
County Treasurer,
Perryville, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of July 20, same being a supplemental letter to your previous request for an opinion. Your letter is as follows:

"Would it be legal or permissible for me to serve as deputy to the County Collector of Revenue, while being Treasurer of the county, beginning January 2, 1935?

Two of the three local candidates have mentioned this to me and asked that I serve provided it is legal.

I am operating an electrical business now, while I am serving as County Treasurer, but if I may also serve as deputy to the collector, I shall arrange accordingly."

We take for granted from the tenor of your letter that you are familiar with the law passed in 1933 whereby the office of treasurer in certain counties is automatically abolished on January 1, 1937. The county of Perry being within the limitations of the provisions as prescribed by the new law, would naturally be affected, and the office of County Treasurer will therefore be abolished at that time.

The case of State ex rel. McAllister v. Dunn, 277 Mo. 38 is decisive on this question. While it does not contain the same facts as in the instant case, the court took occasion to give its views on the incompatibility of the two offices. The Court said:

"What did the Legislature mean when it enacted, in this connection, the provision that 'no sheriff, clerk or collector, or the deputy of either, shall be eligible to the office of treasurer?' If we assume the word 'eligible' was then used in the sense respondent now seeks to give it, a collector could have been appointed treasurer by the county court, then could subsequently have resigned as collector and lawfully qualified as treasurer. This construction, reduced to its lowest terms, would mean that what the Legislature intended was that one could not be both collector and treasurer at the same time. It is a well settled rule that the Legislature is not to be held to have done a vain and useless thing. It is elementary law that one may not hold two offices the duties of which are incompatible. What greater incompatibility could be conceived than the duty of paying and the duty of receiving and granting acquittance for public money? If one person could be both collector and treasurer, he would pay over the money as collector and receive it as treasurer, and as treasurer, issue a receipt to himself as collector. Under the general law, it is settled no man could have held these two positions. Construed as respondent construes it, the statute added nothing whatever to the law and was a useless enactment, a vain and foolish thing. The general law, already in force, covered the whole matter. So far as it concerns the collector, the evil designed to be averted by the statute was not merely that one man could not hold two incompatible offices, but that no man should be put in the possible position of receiving payment from himself though he hold but one office, that of treasurer."

CONCLUSION

Even though our Legislature has seen fit by its acts to abolish the office of County Treasurer and place the duties of the same under the office of the County Collector, thereby holding the two offices compatible we are constrained to hold that until those events transpire, the two offices are incompatible.

Therefore, it is the opinion of this department that you could not serve as deputy to the county collector of revenue while you remain treasurer of Perry County, until January 1, 1937.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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