

EXPENSE VOUCHERS: ARE MEMBERS OF THE ADVISORY BOARD TO THE STATE BUILDING COMMISSION REQUIRED TO FILE SUCH FOR REIMBURSEMENT OF EXPENSE MONEY?

STATE EMPLOYEES: CAN SUCH BE EMPLOYED BY TWO DIFFERENT ^{STATE} DEPARTMENTS SIMULTANEOUSLY?

July 12, 1934.



Hon. Forrest Smith, Auditor
State of Missouri,
Jefferson City, Missouri.

Dear Sir:

Your letter of June 11, 1934, received. In this letter you state and inquire as follows:

"Will you please advise me whether the Advisory Board appointed by the State Building Commission will come under the provisions of Sec. 11405 R. S. Mo. 1929, relative to filing vouchers for reimbursement of money paid out as expenses.

Also please advise me whether an employee of any department of the state can receive compensation and traveling expenses from another department of the state government, or in other words, draw money for the same period from two different departments of the state government."

I.

"Whenever any official, employe or any other person shall travel at the public expense of the state and is paid or reimbursed from any public funds derived from taxes, fees, licenses, or in any other manner prescribed by law, the provisions herein set forth shall govern and no other. * * * * *
(Under scoring writer's own).

* * (c) Before any payment or reimbursement is made to any person on account of any traveling expenses, the original written authority provided herein shall be filed with the state auditor. * * * * *"
R. S. Mo. 1929, Sec. 11405.

The language in this statute seems fairly clear and inclusive. The words employed in the introductory paragraph clearly negative the existence of any other statutory provision governing reimbursement of expense money to persons in the service of the state. Sub-section "C" of the statute clearly provides for the filing with the state auditor of the written authority provided for in the statute.

The only remaining question would seem to be as to whether members of the Advisory Board to the Building Commission are entitled to expense money.

" * * * * * The members shall receive no compensation for services on the commission, but shall be allowed reimbursement for all traveling and other expenses actually incurred in carrying out the purposes of this act."
Laws of Missouri, Extra Session - 1933 - 1934,
p. 107, Section 1.

The quoted portion of this section indicates clearly that the members of the Building Commission are to be allowed reimbursement for expenses incurred in carrying out the purposes of the act. Reasonably, therefore, so long as the members of the Advisory Board are engaged in aiding the Commission to carry out the purposes of the act, they are entitled to reimbursement for expenses in accordance with the procedure laid down in Section 11405, supra.

II.

With reference to your second query:

"That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging."
Constitution, Article II, Section 18.

This provision of the Constitution appears to be at least a partial limitation on the right of one person to be employed in two different departments of the state government, since in many cases it would be impossible to give personal attention to the duties of two offices.

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office under this State, or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof (militia officers, justice of the peace and notaries public excepted), shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such

office or seat in either house of Congress."
Article IV, Section 12.

Thus it is seen that no member of Congress may lawfully hold any other state office of employment.

"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 IX, Section 18.

By this provision it is made unlawful for one person, in cities or counties having more than 200,000 population, to be a state officer, and at the same time be an officer of any county, city, etc. It will be noted that there are certain exceptions, however.

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. *State v. Bus*, 135 Mo., 325; *State v. Lusk*, 43 Mo., 242. In both of these cases it was stated that "the rule at common law is well settled that one who, while occupying a public office, accepts another which is incompatible with it, the first will, ipse facto, terminate without judicial proceeding or any other act of the incumbent. The acceptance of the second office operates as a resignation of the first." Where the functions of two offices are inconsistent, they are regarded as incompatible. *State v. Run*, 277 Mo., 38. The inconsistency which at common law makes offices incompatible does not consist in the physical impossibility to discharge the duties of both offices, but lies rather in a conflict of interest, as where one is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power to remove the incumbent of the other, or to audit the accounts of the other. *State v. Lusk* (supra); *Attorney-General v. Henry*, 159 N. E., 539; *State v. Jones*, 110 N. W., 431; *State v. Wittmer*, 144 P., 643; *Norman W. Lampe*, 104 S. W., 122.

It is very difficult to give an intelligent discussion of the question considered in this division of the instant opinion without information as to what two particular offices are under consideration. The writer has been compelled to limit himself to a broad, general statement of the law in order to reply to the broad question put. To under-

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take to set out an exhaustive list of compatible or incompatible offices, which would meet any situation, is an obvious impracticability.

It is, therefore, the opinion of this department that Article II, Section 18 of the Constitution refers only to full time employees, who, by statute or contract, are to give their full and exclusive time to the one department of the State. It cannot apply to part time employees of the State. Certain offices named in Article IV, Section 12 and Article IX, Section 18 of the Constitution cannot be filled by the same person, because of the Constitutional provision. The question of whether or not two part time offices of the State would be incompatible is a question of fact, which will on necessity have to be determined by a construction of the duties and powers delegated to the particular office, position or department involved.

Respectfully submitted,

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APPROVED:

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