

PUBLIC OFFICERS: Same person cannot hold office of Assistant Postmaster and Public Administrator at same time.

6-1
May 22, 1935



Honorable Joseph M. Bone, Jr.,
Prosecuting Attorney,
Audrain County,
Mexico, Missouri.

Dear Sir:

This department is in receipt of your letter of May 17 making the following inquiry:

"Porter H. Cauthorn of Mexico, Missouri referred to this office the following question, upon which I would like to have your department's opinion, namely: W.S. Eller, who holds the office of Public Administrator in Audrain County, was recently appointed as Assistant Postmaster at Mexico, Missouri. Under the laws and the Constitution of Missouri, may this party legally hold both offices at the same time?"

Your question relates to the right of a person to hold the office of Assistant Postmaster, which is a Federal office, and the office of Public Administrator, same being a county office, at one and the same time.

Section 4, Article XIV of the Constitution of Missouri provides that "No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this State." It cannot be disputed that the office of Assistant Postmaster is an office of profit under the United States Government.

In 1933 the Legislature of Missouri enacted into law Section 296-A (Laws of Mo. 1933, page 165) relating to Public Administrators, same being as follows:

"Each Public Administrator elected, as now or as hereafter provided for in this Article, is hereby declared to be an officer for the county in which he is elected and for the City of St. Louis, if elected therein. The county courts of each county in this state now or hereafter having a population of 100,000 inhabitants or more according to the last federal census shall make suitable provision for an office for the Public Administrator in the Courthouse of the county if suitable space may be had for same, and shall be provided as soon as the county court shall be of the opinion that the business in charge of the Public Administrator is such as to reasonable require a separate office for the convenience of the public: The Public Administrator of the City of St. Louis shall have suitable and convenient offices provided for him in the Civil Courts Building by said city."

This section declares a Public Administrator to be an officer of the county in which he is elected. We are therefore of the opinion that both of the offices mentioned in your letter are offices of profit.

The construction of the phrase "under this state", as contained in Sec. 4, is discussed in the case of State ex rel. v. Buss, 135 Mo. l.c. 335, as follows:

"Under this section all officers (except those under the United States) are divided into two classes, viz.: 'officers under the state' and officers 'under a municipality thereof.' The language 'officers under the state' would include justices of the peace, or they would not have been excepted. Officers of a county, though not named, would be included under the expression 'officers under the state.'"

The interpretation of this phrase is also ably decided in the case of Wood v. Miller, 242 S.W. 573, wherein the Court said (l.c. 575):

"The words 'under this state', as used in the Constitution, mean under the laws of this state, or by virtue of or in conformity with the authority conferred by the state as sovereign. It embraces all offices created by the laws of the state as contradistinguished from other authority. Municipal offices are created by the statutes of the state, and are therefore civil offices 'under this state.' Our conclusion is that appellee is ineligible to hold the office in controversy."

CONCLUSION

It is the opinion of this department that it is violative of Section 4, Article XIV of the Constitution of the State of Missouri for a person to hold the office of Assistant Postmaster of Mexico, Missouri and the office of Public Administrator of Audrain County at one and the same time.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General.