

OFFICER: OFFICES:

One person may hold both the
office of Public Administrator
and Justice of the Peace.

January 8, 1935



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Mr. O. L. Holmes
Maryville
Missouri

Dear Sir:

This is to acknowledge receipt of your letter
dated November 26, 1934, which reads as follows:

"Could a Justice of the peace hold
the office of Public Administrator.
At the same time. The two offices
don't pay enough to justify a good
officer and they are sadly neglected.

There is a possibility that the
Public Administrator may retire and
if so if lawful would be pleased to
combine them. "

Article IX Section 18 of the Constitution of
Missouri provides as follows:

"In cities or counties having more
than two hundred thousand inhabi-
tants 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 dif-
ferent municipalities; But this
section shall not apply to notaries
public, justices of the peace or
officers of the militia."

In the case of Nickelson v. City of Hardin 221 S.W.
358, l. c. 360, the court in construing the above constitu-
tional provision, said:

"The question is not free from difficulty but we are of the opinion that the proper construction of the section is that it applies only in counties and cities having more than two hundred thousand inhabitants."

We must therefore look to the common law to determine the question of whether one person can hold two public offices. Corpus Juris, Volume 46, page 941,942, reads:

"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. But where the functions of two offices are inconsistent, they are regarded as incompatible. 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. The question of incompatibility does not arise when one of the positions is an office and the other is merely an employment."

On the question of whether or not the duties of offices are incompatible, we quote the Supreme Court *en banc*, in *State ex rel. v. Bus* 135 Mo. 1. c. 338:

"The remaining inquiry is whether the duties of the office of deputy sheriff and those of school directors are so inconsistent and incompatible as to render it improper that respondent should hold both at the same time. 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. It was said by Judge Folger in *People ex rel. v. Green*, 58 N. Y. l.c. 304: '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 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, toward 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.' "

The Supreme Court has held that the duties of the offices of county and circuit clerk are not incompatible and may be performed by one person. *State ex rel. Moore v. Lusk* 48 Mo. 242. Also the offices of

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deputy sheriff and school director in the City of St. Louis are not incompatible. State ex rel. Walker v. Bus 135 Mo. 338. They have held that the offices of treasurer and collector are incompatible. State ex rel. McAllister v. Dunn 277 Mo. 38.

In order to determine whether or not the offices of justice of the peace and public administrator are incompatible, it is necessary to examine their duties.

Section 299 Revised Statutes Missouri 1929, reads as follows:

"It shall be the duty of the public administrator to take into his charge and custody the estates of all deceased persons, and the person and estates of all minors, and the estates or person and estate of all insane persons in his county, in the following cases: First, when a stranger dies intestate in the county without relations, or dies leaving a will, and the executor named is absent, or fails to qualify; second, when persons die intestate without any known heirs; third, when persons unknown die or are found dead in the county; fourth, when money, property, papers or other estates are left in a situation exposed to loss or damage, and no other person administers on the same; fifth, when any estate of any person who dies intestate therein, or elsewhere, is left in the county liable to be injured, wasted or lost, when said intestate does not leave a known husband, widow or heirs in this state; sixth, the persons of all minors under the age of fourteen years, whose parents are dead, and who have no legal guardian; seventh, the estates of all minors whose parents are dead, or, if living, refuse or neglect to qualify as curator, or, having qualified, have been removed, or are, from any cause, incompetent to act as such curator, and who have no one authorized by law to take care of and manage their estate; eighth, the estates or person and estate of all insane persons

in his county who have no legal guardian, and no one competent to take charge of such estate, or to act as such guardian, can be found, or is known to the court having jurisdiction, who will qualify; ninth, where from any other good cause, said court shall order him to take possession of any estate to prevent its being injured, wasted, purloined or lost."

Section 300 Revised Statutes Missouri 1929, provides:

"In addition to the provisions of this article, he and his securities shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions and proceedings as are enjoined upon or authorized against executors and administrators, guardians and curators, by articles 1 to 13, inclusive, of this chapter, so far as the same may be applicable. He shall have power to administer oaths and affirmations in all matters relating or belonging to the exercise of his office."

Section 2153 Revised Statutes Missouri 1929, provides as follows:

"Justices of the peace shall have power and jurisdiction throughout their respective counties as follows: First, jointly and severally to cause to be kept all laws made for the preservation of the peace; second, to cause to come before them, or any of them, persons who break the peace, and commit them to jail or bail them, as the case may require; third, to arrest and cause to come before them persons who attempt to break the peace or who are not of good fame, and compel them to give security for their good behavior, or to keep the peace, or both."

Section 2166 Revised Statutes Missouri 1929, reads:

"Except as otherwise provided by law, justices of the peace shall have original jurisdiction of all civil actions and proceedings for the recovery of money, whether such action be founded upon contract or tort, or upon a bond or undertaking given in pursuance of law in any civil action or proceeding, or for a penalty or forfeiture given by any statute of this state, when the sum demanded, exclusive of interest and costs, does not exceed two hundred and fifty dollars, and of all actions against any railroad company in this state, to recover damages for the killing or injuring horses, mules, cattle or other animals, within their respective townships, without regard to the value of such animals, or the amount claimed for killing or injuring the same."

Section 2168 Revised Statutes Missouri 1929, provides:

"No justice of the peace shall have jurisdiction to hear or try any action against any executor or administrator, nor of any action of slander, libel, malicious prosecution or false imprisonment, nor of any action where the title to any lands or tenements shall come in question and be in issue, nor of any strictly equitable proceedings."

A careful study of the statutes fails to show that the duties of justice of the peace and public administrator are inconsistent, incompatible or repugnant to each other.

We are therefore of the opinion that one person may hold at the same time the office of justice of the

Mr. O. L. Holmes

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peace and that of public administrator.

Yours very truly,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

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