

PUBLIC OFFICERS - Same person cannot hold position of road overseer and committeeman under corn-hog program.

April 16, 1935.

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Hon. William H. Sapp,
Prosecuting Attorney,
Boone County,
Columbia, Missouri.

Dear Sir:

We are in receipt of your letter of March 16, wherein you make the following inquiry, and request an opinion from this office regarding same:

"A few days ago the county court appointed a gentlemen in this county as road overseer of a certain district. This same man had been elected by his township as one of the committeemen to handle the corn-hog program. You perhaps are familiar with the organization which takes care of and administers this program. I would like to have an opinion as to whether or not this man can hold both of these positions at the same time."

In an opinion recently rendered to the Honorable Walter Stillwell, Prosecuting Attorney of Marion County, Mo. this department ruled that a person appointed road overseer under Section 7870, R.S. Mo. 1929 was a public officer within the meaning of the law.

A committeeman appointed to handle the corn-hog program is acting under the direction of the Federal government or a Federal agency; therefore, the office of road overseer constitutes a county public officer, while the office of committeeman to handle the corn-hog program would constitute a Federal appointment.

Several sections of the Constitution of Missouri have an indirect bearing on the question involved, among them being Section 12, Article IV, Section 18 Article IX, and Section 4 Article XIV. Section 12 deals with the question of members of the General Assembly holding other offices and therefore cannot be pertinent to our question. Section 18, Article IX relates to persons holding state offices and offices in a county, city or municipality, but pertains to counties and cities having a population of not more than 200,000 inhabitants and therefore constitutes no prohibition against a person holding the two offices now under discussion. Section 4, Article XIV is as follows:

"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."

We know, as a matter of fact, that a road overseer receives certain compensation for his labor and that a committeeman receives certain compensation for handling the corn-hog program; therefore, both are offices of profit.

We are concerned primarily with the meaning of the words "hold any office of profit under this State". The meaning of the various expressions used in our Constitution, such as "officers under this state", "under a municipality thereof", "state officers", etc., are discussed in the case of State ex rel. v. Bus, 135 Mo., l.c. 335-336 in the following language:

"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.'

We come now to the section in question. It expressly divides the officers into three classes, 'state officers', 'officers of any county', and 'officers of a municipality.' This section was quoted by Judge Sherwood as making plain the intention of the convention in the use of the expression 'state officer'

in section 12, article 6, and as convincing that a sheriff was not a state officer within its meaning. The learned judge says: 'If there is any reliability in plain words, this language must set the point discussed at rest and 'make assurance double sure.' State ex rel. v. Spencer, supra.

When we find the constitution using in different connections the same words to designate certain officers, we ought to infer that they were used on every occasion in the same sense. If the expression 'state officers' as used in this section was intended to mean the same as 'officers under the state', as used in other sections, then it would include all officers (except municipal) from constable up to governor. What officers would then be included in the class 'officer of any county'? Can we say that the language is tautological, and should be rejected in order to construe the section as we think it should have been written? As written it has a clear meaning and effect should be given to the words used. Constitutions are supposed to be carefully prepared and effect should be given to every word if possible."

The meaning of the words "under this State" is determined by the Supreme Court of Arkansas 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

In view of the foregoing, it is the opinion of this department that to hold the office of road overseer and also of committeeman on the corn-hog program would be a violation of Section 4, Article XIV of the Constitution of the State of Missouri.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
Attorney General.

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