

PUBLIC OFFICERS: County Surveyor cannot hold office of County Administrator of W. P. A.

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January 22, 1936.



Hon. Louis Schneider,
Presiding Judge of County Court,
Vernon County,
Horton, Missouri.

Dear Sir:

This department is in receipt of your letter of January 10 wherein you request an opinion on the following matter:

"On December 30, 1935, I wrote you requesting an opinion as to whether a County Surveyor-elect can legally hold a Federal remunerative appointment.

"The County Surveyor of Vernon County has accepted an appointment as County Administrator of the WPA, 4th District, State of Missouri.

"We believe that this man cannot lawfully hold this Federal and elective county office at the same time.

"However, before taking any action, we will appreciate the opinion from the Attorney General regarding the same."

On May 22, 1935, this department rendered an opinion to the Honorable Joseph M. Bone, Prosecuting Attorney of Audrain County, Mexico, Mo., wherein the question of a person holding the office of Public Administrator of the county and Assistant Postmaster was discussed, a copy of which opinion

is herewith enclosed. You will note that it was the conclusion of this department that the holding of the two offices was violative of Section 4, Article XIV of the Constitution of Missouri, and several decisions are cited in support thereof. The reason, logic and law as applied in the enclosed opinion should be applicable to the case now under consideration; however, the County Surveyor is a public officer, duly elected as other county officers.

We call your attention to the fact that the County Surveyor of your county, in being appointed County Administrator of the Works Progress Administration, is evidently receiving his appointment by virtue of Section 401, Chapter 8, U.S.C.A., entitled "Public Buildings, Property, and Works", which is in part as follows:

"(a) To effectuate the purposes of this chapter, the President is hereby authorized to create a Federal Emergency Administration of Public Works, all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the 'Administrator'), and to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to chapter 13 of Title 5, to fix the compensation of any officers and employees so appointed. The President may delegate any of his functions and powers under this chapter to such officers, agents and employees as he may designate or appoint."

The above section does not undertake to accept and utilize such state and local officers and employees where employment of the same would be contrary to a statute or constitutional provision of the state. It expressly provides that consent to accept same must first be obtained from the state, and in view of Section 4, Article XIV, of the Constitution, supra, such consent would be impossible.

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We are, therefore, of the opinion that it is violative of Section 4, Article XIV, of the Constitution of Missouri for a person to hold the office of County Surveyor and the office of County Administrator of the Works Progress Administration.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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