

OFFICES: Superintendent of Trachoma Hospital at Rolla may accept employment as examiner for insurance company and Missouri Commission for the Blind if such does not interfere with his duties as Superintendent.

January 13, 1937.

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J. E. Smith, M. D.
Superintendent
Trachoma Hospital
Rolla, Missouri

Dear Dr. Smith:

This is to acknowledge your letter as follows:

"As I am now a full time State employee I will thank you for an opinion concerning two appointments which I have and was allowed to accept while a Federal employee or prior to March 1936.

"About six years ago I was asked to be the Examiner for the Equitable Life Assurance Society on account of the fact that I was the only physician in the County who was a graduate from an A Grade Medical College. All of the other doctors had graduated before medical schools were so graded and was therefore allowed to accept the appointment by the U. S. Public Health Service under which I was working. This appointment rarely requires me to make more than three examinations during a year and as most of such examinations are done during the evenings it does not interfere with my hospital duties.

"The other appointment is the local Examiner for the Missouri Commission for the Blind. It so happens that I am the only eye physician that will examine for the Commission in this section. The Blind Commission and the Trachoma

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Hospital have a great deal in common as we often hold our field clinics together at which time all of the trachoma patients are referred to us and all non-trachomatous patients are referred to the Commission. I am the only eye physician approved by the Commission between St. Louis to the north, Jefferson City to the west and Poplar Bluff to the east. There are other eye physicians in this area but for reasons of their own are not friendly with or toward to the Commission. Again the examinations for blind pension applicants do not exceed two or three in any month and therefore does not interfere in anyway with my hospital duties. The fees for the examinations are \$5.00 and being so few does not represent a big item but the contact between the two departments works for the good of both. However before continuing I will thank you for an opinion on this status."

We note that you state that you are a full-time State employe and that you have the right by contract to examine persons applying for insurance with the Equitable Life Assurance Society and that you are also local examiner for the Missouri Commission for the Blind. You state that the examinations for the Equitable Life Assurance Society are usually done evenings and do not interfere with your duties as Superintendent of the Trachoma Hospital; and that the examinations for the Missouri Commission for the Blind do not interfere with your hospital duties. In other words, the examination of persons for the Equitable Life Assurance Society as well as the Missouri Commission for the Blind do not in anywise interfere with or cause you to be taken away from your duties as Superintendent of the Trachoma Hospital.

It is against public policy of the State of Missouri for one holding an employment or office to accept other employment which would prevent such person from devoting his entire time to the performance of the duties of the office or employment he holds under the State. Your examinations, as we understand it, will not cause the State to suffer in anywise of the taking of your time from your official duties.

Article 1, Chapter 51, R. S. Mo. 1929, relates to "pensions to deserving blind." Section 8898 of said article and chapter makes it the duty of the Commission for the Blind to make regulations "relative to the examination of applicants for pension, including the examination by the oculist." And we assume, by virtue of that section, you were appointed as examining oculist for your district. We do not believe that your appointment as examiner for the Missouri Commission for the Blind amounts to the holding of an office, but believe it is merely an employment.

A person cannot hold two offices if such be incompatible. In 46 Corpus Juris, p. 941, Sec. 46, the following is said:

"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 the 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."

From the facts stated in your letter it is our opinion that you may continue to act as examiner for the

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Equitable Life Assurance Society and as local examiner for the Missouri Commission for the Blind, just so long as said employments do not interfere or take your time away from your official duties as Superintendent of the Trachoma Hospital.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.

JLH:EG