

OFFICERS: Township officer cannot hold office under the United States.

September 16, 1942

Hon. D. D. Thomas, Jr.
Prosecuting Attorney
Carroll County
Carrollton, Missouri



Dear Sir:

Under date of September 14th, 1942, you wrote this office requesting an opinion, as follows:

"The duly elected, qualified and acting Collector of a Township receives an appointment as Assistant Postmaster. The collector enters upon the duties of Assistant Postmaster and receives compensation from the United States. Is such person entitled to continue in office as collector?"

"Your early opinion on the above proposition will be greatly appreciated."

Your attention is called to Section 4, Article XIV, of the Constitution of Missouri, which reads 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."

No case has been found where this section of the Constitution has been construed by an appellate court of the State. But, in the case of State ex rel. Walker v. Bus, 135 Mo. 325, in discussing Section 12, Article IV of the Constitution, which prohibits the appointment of any senator to any office under the State, or any municipality thereof, it is stated at l. c. 335, that a justice of the peace under this section would be an officer under the State, and that county officers would also be included. The justice of the peace is a township officer, as is the township collector. If, under Section 12 of Article IV, a township officer is an officer under the State, it would seem the same meaning should be given to the words "under the State" when used in Section 4, Article XIV.

In the Arkansas case of Wood v. Miller, 242 S. W. 573, the words "under this state" were construed. The following brief quotation is taken from this case at 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.'"

It may be safely stated without citation of authority that the office of Assistant Postmaster is an office of profit under the United States.

CONCLUSION

The office of Assistant Postmaster, an office of profit under the United States, and the office of Township Collector,

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an office under this State, cannot both be held by the same person at the same time.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General of Missouri

WOJ:CP