

OFFICERS:) Whether enlistment in United States Maritime
MILITARY SERVICE:) services creates a vacancy, is a matter for
judicial interpretation.

June 30, 1944



Honorable Paul S. Hollenbeck
Judge of Probate Court
Maries County
Vienna, Missouri

Dear Sir:

The Attorney General acknowledges receipt of your letter of June 23, 1944, requesting an opinion of this Department. Your letter of requests reads as follows:

"Some time ago I was advised in an opinion from your office that in the event of my enlistment in the Army or Navy I could retain my office upon being discharged from such service, in the event my term had not expired during said service. As I have been rejected twice from the Army I now contemplate enlistment in the U.S. Maritime Service. As you no doubt know, this service is not in the same category in many respects as is the other branches.

"My question is this: In event I enlist in the Maritime Service can I retain my office upon being discharged from such service within the duration of my present term of office?"

There are two cases involving the induction of a circuit judge and a circuit clerk, respectively, into the armed forces, (1) State ex rel. McGaughey v. Grayston, 163 S. W. (2d) 335 and (2) State ex inf. McKittrick v. Wilson, 166 S. W. (2d) 499. The Grayston case held that there is no incompatibility in holding the office of circuit judge and a commission in the Army. It is quoted with approval in the Wilson

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case on the proposition that Article II, Section 18 of our Constitution, providing that no officeholder shall hold office without personally devoting his time to the performance of the duties of the office, was intended to prevent farming out of the performance of the duties of that office for profit of the officeholder, and said article did not apply to the situation in either of these cases. The Wilson case held that there was no forfeiture of office by virtue of induction of a circuit clerk into the armed forces.

We have previously rendered an opinion in line with the above two cases to the effect that in the event of your enlistment or induction into the armed forces, no vacancy would be created thereby. We have also previously held that the United States Merchant Marine was not under the direct supervision of the Army or Navy but was established under Section 1126, U. S. C. A., Title 46, and is under the United States Maritime Commission.

The court stated in the Grayston case (l. c. 341), "In order to survive it is necessarily the policy of the State law to aid, not impede our common defense." Whether enlistment in the United States Maritime Service would create a vacancy or amount to a forfeiture of office or constitutes grounds for removal from office, would be a matter for judicial interpretation.

The above and foregoing constitutes the opinion of this Department.

Respectfully submitted,

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APPROVED:

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Attorney General

RCL:EG