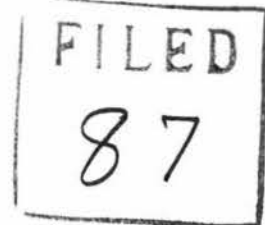


OFFICERS: Office of mayor and that of circuit clerk and recorder are compatible.

May 6, 1949



Mr. Homer L. Swenson  
Prosecuting Attorney  
Wright County  
Mountain Grove, Missouri

Dear Sir:

Your opinion request of recent date reads in part as follows:

"In the recent city election at Hartville, Missouri, which is a city of the fourth class, Mr. Burke Dennis was elected mayor of said city.

"Mr. Dennis is also Circuit Clerk and Recorder of Deeds of Wright County and the question has been raised as to whether he can legally hold both positions."

There is no constitutional or statutory provision which would not allow an individual to hold both the office of mayor of a city of the fourth class and at the same time the office of circuit clerk and ex officio recorder of deeds in a fourth class county. However, there is also the common law doctrine of incompatible and inconsistent offices to consider. In the case of State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, wherein there was the question of whether the duties of the office of deputy sheriff and those of school director were so inconsistent and incompatible that they should not be held by the same person at the same time, the Supreme Court of Missouri, at l.c. 338, states the common law rule as follows:

"\* \* \* At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two; some conflict

in the duties required of the officers, as where one has some supervision of the other, is required to deal with, control, or assist him. \* \* \* \*"

In counties of the fourth class, the circuit clerk is ex officio recorder of deeds, which two offices are essentially ministerial in character. In no instance would the circuit clerk and ex officio recorder of deeds have any supervision over, control, or assist the office of mayor.

The office of mayor in a fourth class city is the chief executive office within that city. This office has the general supervision over all the offices and affairs of the city and has the duty to execute the laws and regulations of that city. The offices of circuit clerk and recorder of deeds are not city offices, but rather county offices, over which the office of mayor would have no control or supervision. There are no circumstances whereby a conflict in the duties of the offices under consideration here would arise, and such offices are therefore compatible and may be held by the same person at the same time.

#### CONCLUSION

Therefore, it is the opinion of this department that the office of mayor of a city of the fourth class and that of circuit clerks and recorder of deeds in counties of the fourth class are not inconsistent or incompatible, and can be held by the same person at the same time.

Respectfully submitted,

RICHARD H. VOSS  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General