

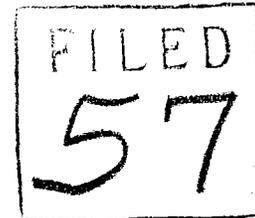
**PUBLIC OFFICERS:
FEES AND SALARIES:**

Offices of deputy sheriff and city marshal are not incompatible. Party holding these offices entitled to compensation provided for each.

November 17, 1950

FILED
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Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Guenther Building
Versailles, Missouri



Dear Mr. Marr:

We are in receipt of your recent request for an opinion of this office, which reads in part as follows:

"D. D. is a deputy and gets \$150.00 per month as such deputy sheriff. Recently he took a job by appointment from the city to be the night marshal, and he gets \$150.00 monthly salary, and about \$50.00 in additional cash for checking and shaking doors of the business firms in the city.
* * * *"

"The presiding judge of the county court who signs the warrants of the county for salaries, wants to know, if the county is authorized to pay him his deputy sheriff's salary when he is also getting a salary from the city for being night marshal? They do not object to him holding the two jobs, but do object to him drawing salaries for both jobs."

Regarding the holding of two public offices by one individual at the same time, we find the following stated by the court in the case of Bruch v. City of St. Louis (Mo. App.), 217 S. W. (2d) 744, 1. c. 748:

"The limitation at common law upon the holding of two or more offices at one and the same time extends no farther than to prohibit the holding of incompatible offices. Any further inhibition must be constitutional or legislative. 42 Am. Jur., Public Officers, sec. 59. * * * * *"

Honorable G. Logan Marr

A careful study has revealed no constitutional or statutory prohibition against the holding of the offices of deputy sheriff and city marshal by the same individual. Regarding the common law principle of incompatible offices, the court in State ex rel. v. Bus, 135 Mo. 325, l. c. 338, 36 S. W. 636, stated:

"The remaining inquiry is whether the duties of the office of deputy sheriff and those of school director are so inconsistent and incompatible as to render it improper that respondent should hold both at the same time. 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 State v. Grayston, 163 S. W. (2d) 335, l. c. 339, 349 Mo. 700, the court held that:

"* * * * The settled rule of the common law prohibiting a public officer from holding two incompatible offices at the same time has never been questioned. The respective functions and duties of the particular offices and their exercise with a view to the public interest furnish the basis of determination in each case. Cases have turned on the question whether such duties are inconsistent, antagonistic, repugnant or conflicting as where, for example, one office is subordinate or accountable to the other."

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The question therefore is whether or not the offices of deputy sheriff and city marshal are inconsistent and incompatible, and such as cannot be held by the same individual at the same time. This question has been decided by the Supreme Court of South Dakota in the case of Gulbrandson v. Town of Midland, 36 N. W. (2d) 655, 1. c. 658, where the court stated:

"The county suggests the point that the offices of town marshal and deputy sheriff are incompatible. It is true that the duty to keep the peace is common to both offices. But that fact, in our opinion, does not render the function of these offices inconsistent or antagonistic and thus render them incompatible. 42 Am. Jur. 936; Peterson v. Culpepper, 72 Ark. 230, 79 S. W. 783 2 Ann. Cases. 378."

In Peterson v. Culpepper, 79 S. W. 783, 1. c. 785, 72 Ark. 230, 2 Ann. Cases. 378, we find the following:

"In the case of State of Arkansas v. Townsend, 79 S. W. 782, a similar question to the question in this case was decided by this court (opinion Feb. 6, 1904), in which it was held that the duties of the offices of probate judge and recorder of a town were not incompatible, * * * * *."

"We are of the opinion that the chief of police of a city of the first class is not a state officer, and that there is no incompatibility between the office of sheriff and the position of chief of police. The duties and the powers of the two are sometimes the same, and the manner of discharging them is substantially the same. This falls within State v. Townsend (opinion by Chief Justice Bunn, Feb. 6, 1904) 79 S. W. 782."

We must therefore conclude that the offices of deputy sheriff and city marshal are not inconsistent and incompatible, and may be held by the same individual at the same time.

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Furthermore, as long as the individual in question retains the right and title to the office of deputy sheriff, he is entitled to the salary provided for that office. Compensation to the holder of a public office is an incident to the office. In the case of *Coleman v. Kansas City*, 173 S. W. (2d) 572, 1. c. 577, 351 Mo. 254, the court states:

"During the time Murray held the office, he is entitled to the salary fixed by law as an incident to that office 'Compensation to a public officer is a matter of statute, not of contract; and it does not depend upon the amount or value of services performed, but is incidental to the office.' State ex rel. *Evans v. Gordon*, 245 Mo. 12, loc. cit. 27, 149 S.W. 638, loc. cit. 741. Also, see State ex rel. *Chapman v. Walbridge*, 153 Mo. 194, 54 S. W. 447, State ex rel. *Vail v. Clark*, 52 Mo. 508."

CONCLUSION

It is therefore the opinion of this department that the offices of deputy sheriff and city marshal are not inconsistent and incompatible, and that these offices may be held by the same individual at the same time. Furthermore, as long as the right and title to each office is retained by the same individual, he is entitled to the compensation provided for each office.

Respectfully submitted,

RICHARD H. VOSS
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APPROVED:

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ATTORNEY GENERAL

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