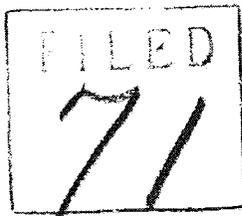


OFFICERS:
ASSESSOR:
COUNTY HIGHWAY COMMISSIONER:

Duties of the office of county highway commissioner are not repugnant or incompatible with those of the county assessor and that one person may hold both offices at the same time.



November 22, 1955

Honorable W. H. Pinnell
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Mr. Pinnell:

Reference is made to your request for an official opinion of this office which request reads as follows:

"I would like an opinion from your office as to:
"Whether an individual may hold an elective county office and also hold the elective office of Road Commissioner."

At our request you have supplied us with the additional information that the elective county office to which you refer is the office of county assessor.

We are unable to find any constitutional or statutory provision which would prohibit one from holding the office of county highway commissioner and the office of county assessor at the same time. However, at common law incompatible offices could not be held by one person at the same time. In view of the fact that the common law doctrine is still in effect in Missouri we must, in answer to your question, determine whether the offices mentioned are compatible or incompatible.

The general rule as to when offices are considered to be incompatible is stated in 42 Am. Jur., page 936, as follows:

"* * *They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant so that, because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations

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of public policy render it improper for an incumbent to retain both. It is not an essential element of incompatibility of offices at common law that the clash of duty should exist in all or in the greater part of the official functions. If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties may conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible. It is immaterial on the question of incompatibility that the party need not and probably will not undertake to act in both offices at the same time. The admitted necessity of such a course is the strongest proof of the incompatibility of the two offices. There is no incompatibility between offices in which the duties are sometimes the same, and the manner of discharging them substantially the same. Nor are offices inconsistent where the duties performed and the experience gained in the one would enable the incumbent the more intelligently and effectually to do the duties of the other."

The common law doctrine of incompatibility of offices was stated and applied in the case of *State ex rel. Walker vs. Bus*, 135 Mo. 325, as follows:

"V. 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 officer, as where one has some supervision of the other, is required to deal with, control, or assist him.

"It was said by Judge Folger in *People ex rel. v. Green*, 58 N.Y. loc. cit. 304: 'Where one

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office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. Thus, a man may not be landlord and tenant of the same premises. He may be landlord of one farm and tenant of another, though he may not at the same hour be able to do the duty of each relation. The offices must subordinate, one the other, and they must, per se, have the right to interfere, one with the other, before they are incompatible at common law."

In order to apply the foregoing noted rule we must examine the statutes relating to the duties of the two offices in question to determine whether there is such an inconsistency in the functions of the offices so as to render them incompatible.

Section 230.010, RSMo 1949, creates in the several counties of the state a state highway commission to be composed of four members.

Section 230.020, RSMo 1949, provides for the appointment of four commissioners by the county court, which commissioners shall be not less than 25 years of age, bonafide residents of the county, and known supporters and advocates of a system of county highways constructed and maintained with a view to affording the greatest convenience to the greatest number of inhabitants of the county, in the matter of farm-to-market roads. Section 230.030, RSMo 1949, prescribes the duties of said county highway commission as follows:

"It shall be the duty of the county highway commission and said commission shall have the power to locate, lay out, designate, construct and maintain, subject to approval of the state highway commission, a system of county highways not exceeding in the aggregate at any given time one hundred miles in any county, by

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connecting by the most practical route the several centers of population in the county, in such manner as to afford a connection with such of said centers of population as are not now located on any state highway with such state highway, and so as to afford, as nearly as may be done, a connection with county highways connecting the centers of population of adjoining counties, to the end that all parts of the county shall be connected with the state highway system as now laid out and designated, and that the inhabitants of the county generally shall have and enjoy a system of highly improved farm-to-market roads. If any part of this county one hundred mile highway system has been, or shall hereafter be taken over by the state highway commission and become a state highway, then an equal amount of new mileage, to take the place thereof, may be placed in the county one hundred mile system."

Other sections such as Sections 230.060, and 230.070, RSMo 1949, provide that certain county highways shall be under the exclusive control of the commission.

Section 53.010, RSMo 1949, provides for the office of county assessor.

Section 53.030, RSMo 1949, provides that every assessor shall take an oath "to assess all the real and tangible personal property in the county in which he assesses at what he believes to be the actual cash value."

Section 137.115, RSMo 1949, provides that the assessor of each county shall, between the dates of January 1 and June 1 of each year, proceed to make a list of all real and tangible personal property in his county and assess the same at its true value in money.

We believe that the foregoing statutory provisions relating to the principal duties of the office of road commissioner and the office of assessor and are sufficient to show that no incompatibility exists between said offices. The duties and functions of one office are not inherently inconsistent or repugnant to the other. Neither office is superior to the other nor does one office have supervision over the other. Therefore, the common law rule of incompatibility is not violated by one person discharging the duties of the two offices.

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CONCLUSION

Therefore, in the premises, it is the opinion of this office that the duties of the office of county highway commissioner are not repugnant or incompatible with those of the county assessor and that one person may hold both offices at the same time.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

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