

TOWN MARSHAL: Offices of night marshal and county treasurer are
COUNTY TREASURER: compatible.
OFFICERS:
COMPATIBILITY:



March 5, 1956

Honorable George Q. Dawes
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Mr. Dawes:

This office is in receipt of a request for an opinion which reads in part as follows:

"I have also been requested by our County Court to inquire into another matter. Our County Treasurer is presently holding the position of night marshal of the City of Ironton. I would appreciate your opinion of whether these two positions are incompatible. The treasurer accepted the marshal's job after his election to county office. See section 54.040."

In answer to this request it is best to first quote Section 54.040 RSMo 1949, which is as follows:

"No sheriff, marshal, clerk or collector, or the deputy of any such officer, shall be eligible to the office of treasurer of any county."

At the first reading, the words in the above section appear plain and there did appear to be no doubt that they provide that a person serving as a marshal shall not be eligible to the office of county treasurer. However, our Supreme Court, in a detailed and thorough analysis of the above statute from the standpoint of its effect and the intentions of its enactors, came to a different conclusion. In the matter of State ex inf. Noblet, Prosecuting Attorney, ex rel. McDonald v. Moore, 152 S.W. 2d 86, quo warranto was sought to oust Mrs. Moore as ineligible under the above quoted statute. At the time of her election, Mrs. Moore was a township collector. In considering the question on page 87, it was stated by the court:

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"Investigating the history of the statute involved, we find it in the Revised Statutes of 1835 on page 153 in substantially the same form except that no 'marshal' was mentioned. It is included in an article entitled 'County Treasuries', in which article the duties of collectors, clerks and other officers are also prescribed. The clerk referred to in the statute is without a doubt the county clerk, or the clerk of a court of record; the sheriff, the county sheriff; and the collector, the county collector. It should be noted that when the statute was enacted all the officers made ineligible for office of treasurer were at the least county officers. As a matter of fact township officers were not provided for until many years later."

In regard to the term marshal, it was further stated by the court on page 87:

"In the Revised Statutes of 1855 on page 1467 we find that the office of marshal, likewise a county office, was established for the County of St. Louis and this officer was added to the statute in question and made ineligible to the office of county treasurer."

From the above, it seems that the term marshal was clearly intended to be a county marshal, as the term clerk meant county clerk and collector, the county collector. We believe that that conclusion can be determined from the reasoning of the judge.

There remains in your question one of common law compatibility of the two offices. Reading of Chapter 79 RSMo 1949 in regard to the duties of a town marshal reveals that the town marshal is an elected officer. He also may be elected town marshal and town collector at the same election, in the event such election is provided for by ordinance in accordance with Section 79.050.

Section 79.230 provides that the mayor may appoint other officers including a night watchman with the consent and approval of the board of aldermen. We fail to see, however, how the aforesaid sections can affect such a position which is described as night marshal. Having no notice of the ordinances that may be enforced in the City of Ironton creating the position, duties and tenure of night marshal, we cannot exactly say that the two offices are compatible. It is, however, felt that insofar as the state law is concerned, there is nothing to cause ineligibility or in-

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compatibility in accordance with Section 54.040 supra and State v. Moore supra. Section 54.040 cannot be interpreted to make a city night marshal ineligible to the office of county treasurer.

We have found no state law prohibiting the holding of the two positions at the same time.

CONCLUSION

It is the opinion of this office that the positions of night marshal of a city of the fourth class and treasurer of a county of the fourth class are compatible positions and may be held at the same time by the same person.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Faris.

Yours very truly,

JOHN M. DALTON
Attorney General

JWF/bi