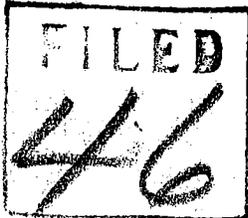


COMPATIBILITY OF OFFICES:
CORONER AND MAGISTRATE:

Magistrate cannot hold both offices of
magistrate and coroner at the same time for
the reasons the duties are incompatible,
each with the other.



February 20, 1956

Honorable John A. Johnson
State Senator, 24th District
Ellington, Missouri

Dear Senator Johnson:

This will acknowledge receipt of your request for an opinion
as to whether a person may hold the offices of magistrate and
coroner.

Under the general rule of common law if the duties are not in-
compatible and there are no statutory or constitutional inhibitions
against it, then it is legal for one to hold both offices at the
same time. The mere fact that one may not have time to hold both
offices in no way affects the right to hold them.

Volume 46, O.J., Section 46, page 941, 942 and 943 lays down
the general and accepted rule in the case as follows:

"At common law the holding of one office does
not of itself disqualify the incumbent from
holding another office at the same time,
provided there is no inconsistency in the
functions of the two offices in question. But
where the functions of two offices are in-
consistent, they are regarded as incompatible.
The inconsistency, which at common law makes
offices incompatible, does not consist in the
physical impossibility to discharge the duties
of both offices, but lies rather in a conflict
of interest, as where one is subordinate to the
other and subject in some degree to the super-
visory power of its incumbent, or where the
incumbent of one of the offices has the power to
remove the incumbent of the other or to audit
the accounts of the other. The question of
incompatibility does not arise when one of the
positions is an office and the other is merely
an employment."

One of the most frequently quoted decisions in this state of

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compatibility of office will be found in State ex rel. v. Bus, 135 Mo. 325, l.c. 338, 33 L.R.A. 616, the pertinent part of which reads:

"* * * 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.

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

See also Bruce vs. County of St. Louis, 217 S.W. 2d. 744, and State ex rel. McGaughey vs. Grayston, 163 S.W. 2d. 335, 349 Mo. 700, both of which follow the principle laid down in State ex rel. Bus, supra.

In view of the foregoing it is necessary to examine the statutes and constitutional provision in order to determine if the duties of a magistrate and those of a coroner are compatible.

Section 58.450, RSMo 1949, authorized any magistrate or judge of the circuit court of the proper county to take an inquest if the coroner is unable to do so and to perform all duties enjoined upon said coroner. The 66th General Assembly repealed that statute and enacted a new one known as Section 58.205, RSMo Cum. Supp. 1955:

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"The sheriff of the proper county shall, in the temporary absence of the coroner for any reason, perform all the duties imposed by law upon the coroner."

Whether the repeal of Section 58.450 and the enactment of Section 58.205, supra, has any significance as to whether the General Assembly, in repealing and enacting said section did so because it was of the opinion that the duties of the magistrate and coroner were incompatible, or was merely a desire to transfer duties from the magistrate to the sheriff for other reasons, it is difficult to determine. However, it is not unreasonable to contend that it had in mind that such duties might be incompatible.

Section 58.190, RSMo 1949, further authorizes the coroner to execute process and perform all other duties of the sheriff when the sheriff is disqualified.

Section 58.200, RSMo 1949, further requires that when the office of the sheriff shall be vacant the coroner of the county is authorized to perform all the duties which are by law required to be performed by the sheriff until another sheriff shall be appointed and qualified.

It can be seen in view of the foregoing statutes, that if a magistrate holding the office of coroner should be called upon to act as sheriff, that he might be issuing and serving said process and approving his own return thereto and probably performing other conflicting duties. Furthermore, he would be required to take inquests in certain instances.

In view of the foregoing, we are of the opinion there is a possibility that if a magistrate should also be holding the office of coroner at the same time he may be called upon to act as sheriff, the duties of these offices could quite easily be conflicting and incompatible.

We are enclosing copies of two opinions rendered by this department which will support the conclusion reached herein as to the incompatibility of the two offices of magistrate and coroner. One opinion was rendered to you under date of August 19, 1955, and the other to Honorable J. Morgan Donelson, prosecuting attorney of Mercer County, Missouri, under date of December 9, 1955.

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CONCLUSION

Therefore, it is the opinion of this department that a magistrate cannot hold both offices of magistrate and coroner at the same time for the reason that the duties are incompatible with each other.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

Enclosures (2)

ARH:mw