OPINION NO. 251 ANSWERED BY LETTER.

June 12, 1962

Mr. Sidney B. McClanahan
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Dear Sid:

As you know, this office is limited in the rendering of "official" opinions to certain statutorily designated public officials. Therefore, the following answer to your letter of June 4, 1962 is in the nature of an unofficial commentary, not an official opinion.

Your letter, in essence, raises two questions:

1. Can the State compensate committee people for their party service? and

2. Can the State prohibit such persons from holding public office or public jobs at the same time?

I will attempt to answer these questions under:

a) existing state law; and

b) effect of statutory enactment.

I am of the opinion that under existing state laws neither state payment of compensation to committee people, nor prohibition of their holding other public office is possible. But that to allow these practices, they could be made possible by statutory enactment and would not need an amendment to the Constitution.

The present Missouri Statutes, Sections 120.750 through 120.840, RSMo 1959, that provide for party committees and committee people do not provide for compensation of these public officers. It has been well established in Missouri that a public officer is not entitled to fees or compensation unless provided by statute, Williams v. Chariton County, 85 Mo. 645, State ex rel. Linn County v. Adams, 72 S.W. 655, 172 Mo. 1.

The existing laws do not prohibit the committee people from holding public office or jobs. The Constitution of Missouri has only one provision as to holding two offices and that is in Article III, Section 12:

> "No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative."

As a committeeman serves without compensation, the position is not a lucrative one, so this constitutional provision has no effect on your question.

The statutes are mute on the question of holding of two offices. The Common Law which is followed in Missouri in this situation limits the number of offices one can hold, only to those that are compatible and consistent; this is the holding in State ex rel. Walker v. Bus, 135 Mo. 325. In an opinion of this office to Mr. Andrew J. Higgins, under date of October 30, 1952, it was held that the office of a party central committeeman is not incompatible with the same individual holding county or municipal office, unless specifically prohibited by statute or the Constitution of Missouri.

The effect of a statutory enactment would reach the result desired; it would not require a constitutional amendment.

The Supreme Court of Missouri held in Noonan v. Walsh, 273 SW2d 195, that as a committeeman is charged with performing certain functions of government he is therefore a public officer. This satisfies the requirement that taxes "may be levied and collected for public purposes only," in Article X, Section 3 of the Missouri Constitution, as it makes party committeemen public officers. Therefore all that would be needed to compensate these committee people would be a statute passed setting out their compensation.

Mr. Sidney B. McClanahan

It would not require a constitutional amendment but only a statutory enactment to prohibit committee people from holding other public office or public jobs. This has been a principle long established in Missouri. In State ex rel. Wingate v. Woodson, 41 Mo. 227, the Supreme Court held that the State's power to declare in its Constitution, or by legislative enactment what shall constitute the test of eligibility to office is unquestionable. And in 1896, the Court held in State ex rel. Walker v. Bus, supra, that where the holding of two offices by the same person at the same time is forbidden by the Constitution or a statute, the effect is the same as in a case of holding incompatible offices at common law.

Therefore, it is my belief that under the existing laws of Missouri, the legislature can neither pay compensation to, nor prohibit committee people from holding other public office. To accomplish these ends, it would take the passage of a statute setting out the compensation and the prohibition. It would not be necessary to have a constitutional amendment to effect either proposition.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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