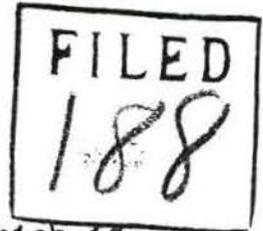


ASSESSORS (CITY AND TOWNSHIP): 1. The offices of city assessor
TOWNSHIP ORGANIZATION: and city councilman in a third
CITY COUNCILMAN: class city are incompatible and
THIRD CLASS CITIES: one person may not hold both of
COUNTIES: said offices simultaneously.
2. The offices of city assessor
in a third class city and township clerk, ex officio assessor,
in a township organizational county of the third class are not
incompatible nor is there any statutory or constitutional pro-
hibition against one person holding both offices and therefore
one person may hold both offices simultaneously.

July 24, 1963

OPINION NO. 188

Honorable Ruben A. Schapeler
Representative
Bates County
Butler, Missouri



Dear Mr. Schapeler:

This opinion is in answer to your inquiry which is stated as follows:

"I would like to inquire whether it is permissible for one person to hold the office of Township Clerk and ex officio Assessor and also hold the position of City Assessor and member of the city council at the same time.

"I would appreciate a written opinion from you."

In attempting to answer this inquiry it is assumed that we are dealing with a township organizational county and a city of the third class which has not adopted one of the optional forms of city government.

To answer your inquiry it must first be separated into its component parts as follows and taken individually:

1. May one person hold the office of city assessor and city councilman simultaneously; and,
2. May one person hold the office of township clerk, ex officio assessor and city assessor simultaneously.

In general, it may be said that one person may hold several public offices at the same time unless forbidden by a specific statute, constitutional prohibition or the common law rule against holding two offices simultaneously when said offices are incompatible.

We know of no specific statute or constitutional

provision that would prohibit the simultaneous holding of offices of city councilman and assessor of a third class city nor the simultaneous holding of township clerk ex officio assessor and city assessor, and therefore must turn to the common law rule to determine the question.

"The rule at common law is well settled that where one, while occupying a public office, accepts another, which is incompatible with it, the first will ipso facto terminate without judicial proceeding or any other act of the incumbent * * *." State v. Bus, Mo., 36 S.W. 636, at 637.

There is no universally applicable rule by which this question may be decided. The determination must be made on an individual case to case basis. State v. Grayston, Mo., 163 S.W.2d 335, at 339. There are, however, certain guides which have been set out and which are helpful in each case. The Supreme Court of the State of Montana set out the following in an early case:

"Offices are 'incompatible' when one has power of removal over the other * * *, when one is in any way subordinate to the other * * *, when one has power of supervision over the other * * *; or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both * * *."

Also, it has been stated that offices are incompatible when:

- (a) One is subordinate to the other;
 - (b) One had the power of appointment or removal over the other; or
 - (c) One audits the accounts of the other.
- C.J.S. Officers, §23, p. 135.

With these standards or guides in mind, what are the duties and powers of a city councilman and the assessor in a third class city? The primary sections that in this question involve us are: 77.310, 77.340, and 77.370, RSMo 1959, which respectively provide as follows:

Section 77.310:

"The mayor shall have power to require, as often as he may deem it necessary, any officer of the city to exhibit his accounts or other papers or records, and to make reports to the council, in writing, touching any subject or matter pertaining to his office."

Section 77.340:

"The mayor may, with the consent of the majority of all the members elected to the city council, remove from office, for cause shown, any elective officer of the city, such officer being first given opportunity, together with his witnesses, to be heard before the council, sitting as a court of impeachment. Any elective officer may, in like manner, for cause shown, be removed from office by a two-thirds vote of all the members elected to the city council, independently of the mayor's approval, or recommendation. The mayor may, with the consent of a majority of all the members elected to the council, remove from office any appointive officer of the city at will; and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the council, independently of the mayor's approval or recommendation. The council may pass ordinances regulating the manner of impeachment and removals."

Section 77.370:

"1. Except as hereinafter provided, the following officers shall be elected by the qualified voters of the city: Mayor, police judge, attorney, assessor, collector, treasurer and, except in cities which adopt the merit system police department, a marshal.

* * * * *

"3. Whenever a city contracts for the assessment of property or the collection of taxes by the county or township assessor or collector respectively, as authorized by section 70.220, RSMo, the city council shall by ordinance provide that at the expiration of the term of the then city assessor or collector, as the case may be, the office is abolished and thereafter no election shall be had to fill the office; except that in the event the contract expires and, for any reason, is not renewed, the council may by ordinance provide for the election of such officer at the next and succeeding regular elections for municipal officers. * * *"

It may be seen from the above statutes that the mayor and city council have power of supervision over the assessor, power of removal from office, and power to audit the assessor's books. Since, by these provisions, the mayor and city council do have these powers over the city assessor and since our standards or guides show that when these powers are possessed the offices are incompatible, it would follow that the offices of city councilman and assessor are incompatible and one person may not hold both offices simultaneously.

Turning now to our second question, i.e., may one person hold the office of township clerk, ex officio assessor and city assessor simultaneously, we must now apply the guides as set out supra for determining the common law incompatibility. Looking at the statutes concerning the township clerk, ex officio assessor, we find that Section 65.110, RSMo 1959, provides that such clerk, ex officio assessor shall be elected. Section 65.160, RSMo 1959, provides the method of his assuming office. Section 65.230, RSMo 1959, provides for his compensation as clerk; and Section 65.240, RSMo Cum. Supp. 1961, provides for his compensation as ex officio assessor. We find nothing in either Chapter 77, RSMo 1959, governing cities of the third class, or Chapter 65, RSMo 1959, concerning assessors that would conflict in any way with one person holding both offices simultaneously.

Further, we find at Section 77.370, RSMo 1959, as set out supra, a provision that the county or township ex officio assessor may by contract perform the city assessment work and further, at Section 94.010, RSMo 1959, a provision that a county (township) and city assessor's books shall conform

with each other and also at Section 94.015, RSMo 1959, the procedure to be used when the township assessor by contract performs the assessing for the city.

From the fact that there is no power of supervision, audit, removal and the added factor, as mentioned supra, that the city may by contract provide that the township assessor may provide the city assessment books, it is evident that there is no incompatibility between the offices of city assessor in a third class city and township assessor and therefore one person may hold both offices simultaneously.

CONCLUSION

It is the opinion of this office that:

1. The offices of city assessor and city councilman in a third class city are incompatible and one person may not hold both of said offices simultaneously.
2. The offices of city assessor in a third class city and township clerk, ex officio assessor, in a township organizational county of the third class are not incompatible nor is there any statutory or constitutional prohibition against one person holding both offices and therefore one person may hold both offices simultaneously.

This opinion, which I hereby approve, was prepared by my assistant, Robert R. Northcutt.

Very truly yours

THOMAS F. EAGLETON
Attorney General