

OFFICERS:
COUNTY TREASURER EX OFFICIO
COLLECTOR:
TOWNSHIP ASSESSOR:
COUNTY BOARD OF EQUALIZATION:
BOND:
COMPATABILITY OF OFFICES:

There is no prohibition against a person who is presently township assessor and is also county treasurer ex officio collector-elect, from continuing his duties as township assessor until he assumes the duties as county treasurer ex officio collector. The bonds which must be given by a county treasurer ex officio collector in a county under township organization are the bonds required by Sections 54.070 and 52.020, RSMo Cum. Supp. 1963. A person who resigns as township assessor and then becomes county treasurer ex officio collector, is no longer a qualified member of the county Board of Equalization.

OPINION NO. 34 (1965)
OPINION NO. 414 (1964)

January 20, 1965



Honorable Albert F. Turner
Wright County Prosecuting Attorney
Mountain Grove, Missouri

Dear Mr. Turner:

This opinion is given in response to your letter dated December 7, 1964, requesting advice from this office. Your letter reads as follows:

"In Wright County, we have a man elected treasurer ex officio collector who is presently the township assessor in Hart township.

"In your opinion, is this man qualified to retain the office of assessor until he actually assumes the office of treasurer? After he resigns as assessor and becomes treasurer, is he still qualified as a member of the Board of Equalization?

"We would also like to know how much bond this officer should be required to post."

We find no statutory provision prohibiting an individual from retaining the office of township clerk and ex officio assessor until he assumes the office of county treasurer and ex officio collector to which he has been elected.

Even when the duties of two offices are incompatible, the common law limitation in this regard only prohibits the holding of two or more incompatible offices at the same time. State ex rel. Gragg v. Barrett, 352 Mo. 1076, 180 S.W. 2d 730; Bruce v. City of St. Louis, 217 S.W. 2d 744. It is obvious that one does not hold office until one enters upon the discharge of the duties of such office. Thus, the common law prohibition would not apply in the case at point where the person who is presently township assessor does not enter the office of county treasurer ex officio collector until April 1 pursuant to Section 54.030, RSMo 1959.

The bonds required for a county treasurer ex officio collector in township organization counties are fixed by statute. Such a person occupies the status of a dual officer and as such, must give bonds covering the duties as county treasurer and as county collector. Section 54.070, RSMo 1959, fixes the county treasurer's bond at:

"* * * not less than twenty thousand dollars nor more than the highest amount of money held by the treasurer at any one time during the year prior to his election or appointment, to be fixed and approved by the county court, * * * provided, that the county treasurer in any county of the third class or fourth class may furnish either a personal bond or a surety bond and in case a surety bond is required by the county court in said county said surety bond shall be paid for by said county."

Section 54.330, RSMo 1959, provides that in a county under township organization, the county treasurer as ex officio county collector is required also to furnish bond as ex officio county collector under the general revenue law. Section 52.020, subparagraph 1, RSMo Cum. Supp. 1963, provides:

"Every collector of the revenue in the various counties in this state, * * * before entering upon the duties of his office, shall give bond and security to the state, to the satisfaction of the county courts, * * * in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent of the amount; but no collector shall be required to give bond in excess of seven hundred and fifty thousand dollars * * *."

Since Wright County is a third class county, sub-paragraph 2 of this section would allow the county court of Wright County to:

"* * * require the county collector to deposit daily all collections of money in the depositories selected by the county court in accordance with the provisions of sections 110.130 to 110.150, RSMo, * * *. If daily deposits are required to be made, the county courts may also require that the bond of the county collector shall be in the sum equal to one-fourth of the largest amount collected during any one month of the year immediately preceding his election or appointment, plus ten per cent of the amount * * *."

After the person in question resigns as township assessor and assumes the duties of the county treasurer ex officio collector, it is our opinion that he would no longer be a qualified member of the county Board of Equalization.

Section 138.010, sub-paragraph 1, RSMo 1959, provides:

"In every county in this state, except as otherwise provided by law, there shall be a county board of equalization consisting of the judges of the county court, the county assessor, the county surveyor, and the county clerk who shall be secretary of the board without vote, except in any county having township organization, the sheriff of the county shall also be a member of the board of equalization, and the township assessor shall sit as a member of the board of equalization when the assessment of his township is under consideration or review."

This section clearly sets out the persons qualified for membership on the county Board of Equalization, the county treasurer ex officio collector not being among those qualified.

CONCLUSION

It is, therefore, the opinion of this office that there is no prohibition against a person who is presently township assessor

Honorable Albert F. Turner -4-

and who has been elected county treasurer ex officio collector from continuing his duties as township assessor until he assumes the duties as county treasurer ex officio collector.

The bonds which must be given by a county treasurer ex officio collector in a county under township organization are the bonds required by Sections 54.070 and 52.020, RSMo Cum. Supp. 1963.

A person who resigns as township assessor and then becomes county treasurer ex officio collector, is no longer a qualified member of the county Board of Equalization.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Gary A. Tatlow.

Very truly yours,


NORMAN H. ANDERSON
Attorney General