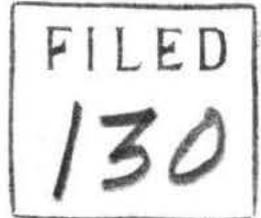


March 5, 1965



Honorable Charles B. Faulkner
Prosecuting Attorney of Lawrence County
Mt. Vernon, Missouri

Dear Mr. Faulkner:

This letter is in answer to your request for an opinion of this office on the question of whether an elected Councilman of a third class city can also be employed on a monthly salary either as an employee of the City's Street Department or as the Street Commissioner of the City.

The Street Commissioner is appointed by the Mayor with the consent and approval of a majority of the Council, pursuant to Section 77.330, RSMo 1959. You have stated that employees of the Street Department are appointed subject to the approval of the Mayor and Council. It is our view that a Councilman is ineligible for either employment on the ground of public policy of the State of Missouri.

A leading authority which bears on this question is that of State ex rel. vs. Bowman 184 Mo. App. 549.170 S.W. 700. In that case a city Councilman was held ineligible for the appointive office of City Clerk. The Court stated, l.c. 703:

"We are not without abundant authority for this ruling. The case of Meglemery v. Weissinger, 140 Ky. 353, 131 S. W. 40, 31 L.R.A. (N.S.) 575, is a leading case on this subject. The editorial note to that case says:

"The adjudged cases upon the validity of appointment to office made from the membership of the appointing body hold uniformly that such appointments are illegal and to be generally discountenanced".

"In that case it was held that the fiscal court of a county, empowered to appoint a bridge commissioner, a salaried officer could not appoint one of their own number. No specific statute or constitutional provision is cited as prohibiting such action. The court held the appointment void as against public policy, and said:

"Nor does the fact that his term expired within a few days after his appointment, or the fact that his duties would be prescribed and his compensation allowed by a body of which he was not a member, or the fact that he was not present with the court when his appointment was made, have the effect of changing this salutary rule. The fact that the power to fix and regulate the duties and compensation of the appointee is lodged in the body of which he is a member is one, but not the only, reason why it is against public policy to permit such a body charged with the performance of public duties to appoint one of its members to an office or place of trust and responsibility. It is of the highest importance that municipal and other bodies of public servants should be free from every kind of personal influence in making appointments that carry with them services to which the public are entitled and compensation that the public must pay. And this freedom cannot in its full and fair sense be secured when the appointee is a member of the body and has the close opportunity his associations and relations afford to place the other members under obligations that they may feel obliged to repay."

"Other cases to the same effect will be found, giving the same and other

reasons for so holding. Smith
v. City of Albany, 61 N.Y. 444;
Gaw et al. v. Ashley et al., 195
Mass. 173, 80 N.E. 790, 122 Am St.
Rep. 229; People v. Thomas, 33
Barb. (N.Y.) 287; State ex rel.
v. Taylor, 12 Ohio St. 130; Kinyon
v. Duchene, 21 Mich. 498."

Consequently we feel that your inquiry must be answered in
the negative.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

DLR/sj