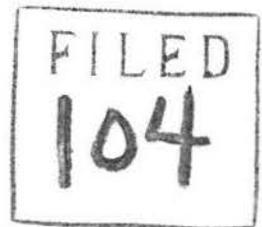


COMPATIBILITY OF OFFICES:  
CORONERS:  
DEPUTY SHERIFFS:  
SHERIFFS:

The same individual cannot serve in the dual capacity of coroner and deputy sheriff because the two offices are incompatible.

OPINION NO. 104  
436 (1967)

March 19, 1968



Honorable Haskell Holman  
State Auditor  
Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Holman:

This is in answer to your request for an opinion of this office on two questions concerning sheriffs and coroners. The first question reads as follows:

"When the office of sheriff of a third class county became vacant due to the resignation of the sheriff and the coroner of the county acted as sheriff from the date of resignation and until the successor sheriff was elected at a special election and assumed office, the following question is posed:

"q. - Would the coroner of the county be entitled to receive any compensation, other than that provided by statute for coroner's salary, for acting sheriff during the period of vacancy?"

This exact question was dealt with in an Attorney General's Opinion, dated October 6, 1955, to the Honorable John Hosmer (copy enclosed). That opinion held that a coroner performing the duties of sheriff due to a vacancy in the office may not receive additional salary. We still adhere to this opinion which answers your question.

Honorable Haskell Holman

Your second question reads as follows:

"When a duly elected and qualified coroner of a third class county is appointed as deputy sheriff by the sheriff, the following questions arise:

"1. Is it permissible for the same individual to serve in the dual capacity of coroner and deputy sheriff?

"2. If the answer to question No. 1 is in the affirmative, would the coroner appointed as deputy sheriff be entitled to receive compensation and expense reimbursement from the county for services performed as deputy sheriff in addition to the statutory salary allowed to him as coroner?"

The answer to the first question depends on whether the office of deputy sheriff and coroner are incompatible.

Compatibility and incompatibility of offices is a common law doctrine which was discussed in the leading Missouri case of State ex rel. Walker v. Bus, 135 Mo. 325, where the Court said, l.c. 338, 339:

"V. The remaining inquiry is whether the duties of the office of deputy sheriff and those of school director are so inconsistent and incompatible as to render it improper that respondent should hold both at the same time. 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.

Honorable Haskell Holman

"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.'"

Where incompatibility of offices exists, the courts of this state have held that the officeholders may not hold such offices. This is a common law limitation prohibiting the holding of two offices which are incompatible.

It is our opinion that because of Section 58.190, RSMo 1959, that the two offices are incompatible. This Section reads as follows:

"Every coroner, within the county for which he is elected or appointed, shall serve and execute all writs and precepts, and perform all other duties of the sheriff, when the sheriff shall be a party, or when it shall appear to the court out of which the process shall issue, or to the clerk thereof, in vacation, that the sheriff is interested in the suit, related to or prejudiced against any party thereto, or in anywise disqualified from acting; in such case, the county court may require the coroner to give an additional bond."

Honorable Haskell Holman

Deputy sheriffs of third and fourth class counties are appointed by the sheriff. Section 57.250, RSMo 1959. The coroner in performance of his duties as sheriff under Section 58.190, supra, would be in a position of supervision over himself as deputy sheriff.

CONCLUSION

It is the opinion of this office that the same individual cannot serve in the dual capacity of coroner and deputy sheriff because the two offices are incompatible.

The foregoing opinion which I hereby approve was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General

Enclosure  
(Opn. dated 10/6/55/Hosmer)