

COMPATIBILITY OF OFFICES: An individual employed full time  
CONFLICT OF INTEREST: as a deputy sheriff of Buchanan  
DEPUTY SHERIFFS: County may serve as a member of  
SHERIFFS: the Municipal Excise Board for the  
OFFICERS: City of St. Joseph.

OPINION NO. 242

May 14, 1968



Honorable Thomas L. Duty  
Prosecuting Attorney  
Buchanan County  
St. Joseph, Missouri 64501

Dear Mr. Duty:

This is in response to an opinion request by your office in which your assistant Mr. Michael Paul Harris inquires as follows:

"Buchanan County has recently employed an individual as a full time deputy sheriff who is also a member of the Municipal Excise Board for the City of St. Joseph. An opinion has been requested from your office concerning whether or not a deputy sheriff for a second class county in the State of Missouri can serve as a member of a municipal excise board."

It appears that the basic question, therefore, is whether the positions are incompatible.

In considering whether or not the positions are incompatible we must consider whether, under the common law, they are inconsistent, repugnant to each other, or whether the one is essentially subordinate to the other. Likewise, we must also consider whether or not the positions are incompatible by reason of either constitutional or statutory prohibition.

The appointment of deputy sheriffs of second class counties is authorized by Section 57.220, RSMo, and Section 57.270 RSMo, provides that the deputy sheriff shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff.

Honorable Thomas L. Duty

With respect to the organization of the Municipal Excise Board of the City of St. Joseph, we note that the voters of the City of St. Joseph accepted a constitutional charter form of government in 1961. Article XVI, Section 16.4 of the Charter provides that the council shall have the power to establish advisory boards from time to time and to provide for the scope and powers of such boards as it may deem necessary. Existing ordinances remained in effect by reason of Charter Article XX, Section 20.2.

An examination of the liquor regulations of the City of St. Joseph, which are designated as Article XII of the Municipal Code of the City of St. Joseph, 1949, as amended, indicates that the excise board is authorized by Section 12-489. The appointment, terms and qualifications of the members thereof are controlled by the terms of Article XVI, Section 16.1 and Section 16.2 of the Charter. That is, all such boards shall consist of five members appointed for five years, with staggered terms of office, and among other requirements, shall serve without compensation. The appointment and removal of the members of the board are made by the mayor with the approval of the council

The Municipal Code, Article XII, gives the members of the excise board the authority to consider applications for licenses to sell liquor either wholesale or retail and to make their findings and recommendations to the council. Similarly, the members of the excise board have authority to inspect premises for violations, to hold hearings concerning suspensions or revocations, although the revocation or suspensions do not become effective until confirmed by the council.

While we do not pretend to set out the entire scope of the powers and duties of the excise board, it is quite clear that they are largely advisory and ministerial. Consonant with the provisions of the Charter are the provisions of the Municipal Code which reiterate that no member of the board shall receive any salary, and their duties "shall be limited and confined to investigations and recommendations to the council upon all applications for liquor licenses and the revocations of said licenses." Municipal Code Article XII, Section 12-489.

Our examination of the law with respect to these two positions does not indicate any area of incompatibility either in the common law or the statutory law, nor any inconsistency, repugnancy or subordination.

Honorable Thomas L. Duty -

The most noteworthy case on this subject is State ex rel Walker v. Bus, 135 Mo. 328, 36 S.W. 636 (1896). This case dealt with the positions of deputy sheriff and school board director and has been extensively cited as authority.

It was held in Bus that the deputy sheriff was a public officer under the law of the state, performing duties within a prescribed area. The inquiry was whether the offices of deputy sheriff and of school director of the City of St. Louis were incompatible. The court in holding that they were not, stated that they were unable to discover incompatibility or inconsistency in the public functions of the two offices or where the two offices could possibly come in conflict or antagonism unless the deputy sheriff should be required to serve process upon a school director. Such a possibility, however, was considered too remote to create an incompatibility.

#### CONCLUSION

It is the opinion of this office that an individual employed full time as a deputy sheriff of Buchanan County may serve as a member of the Municipal Excise Board for the City of St. Joseph.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General