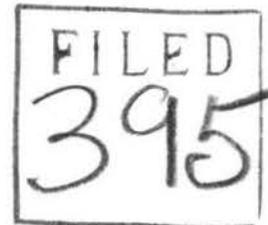


OFFICERS:
PUBLIC OFFICERS:
COMMITTEEMEN:

One can hold the offices of United States Representative in Congress and party committeeman concurrently.

OPINION NO. 395

October 29, 1968



Honorable Johnnie S. Aikens
State Representative - 74th District
Missouri House of Representatives
5145A Delmar Boulevard
St. Louis, Missouri 63108

Dear Representative Aikens:

This is in response to your request for an opinion as to whether a ward or township committeeman can hold the office of United States Representative in Congress.

The Missouri Constitution, Article VII, Section 9 sets forth a restriction upon the holding of two offices concurrently, one federal and the other state. It provides: "No person holding an office of profit under the United States shall hold any office of profit in this state, members of the organized militia or of the reserve corps excepted." Although it has been held that a committeeman is a public officer, Noonan v. Walsh, 273 S.W.2d 195, 196 (Mo. 1954), the office of committeeman is not an office of profit. Therefore, the restriction in the Missouri Constitution provides no barrier.

Likewise, there are no provisions in the United States Constitution which would prevent the holding of these two offices concurrently. Article I, Section 6 merely prevents one who is holding an office under the United States from being a member of either house of the United States Congress during his continuance in office.

The only other possible restriction is the common law rule against holding incompatible and inconsistent offices concurrently, as set forth in State ex rel Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 637 (1896). It was said there that incompatibility does not consist of a physical inability of one person to perform the duties of two offices, but there must be some inconsistencies in the functions of the two, some conflict in the duties required of the officers. 67 C.J.S., Officers, Section 23, page 135 says:

Honorable Johnnie S. Aikens

" . . . the inconsistency, . . . lies . . . in a conflict of interest, as where one [office] is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or the power to remove the incumbent of the other, or to audit the accounts of the other, the question being whether the occupancy of both offices by the same person is detrimental to the public interest or whether the performance of the duties of one interferes with the performance of those of the other "

We find no such conflict here. The duties of a committeeman, in representing and acting for his party, must be carried out with a view towards the public interest since he is, according to the Missouri Supreme Court, a public official. In this respect, there is no inconsistency between the two offices. Also, there is no way in which a congressman could use his office as committeeman to secure his renomination as the party candidate for United States Representative, as this decision is made by the voters in the primaries.

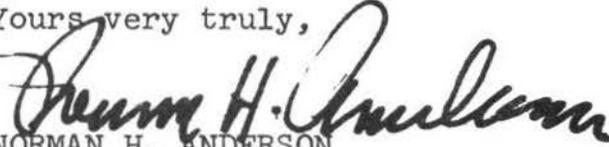
Therefore, we find no incompatibility between the two offices.

CONCLUSION

It is our opinion that one can hold the offices of United States Representative in Congress and party committeeman concurrently.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard L. Wieler.

Yours very truly,


NORMAN H. ANDERSON
Attorney General