

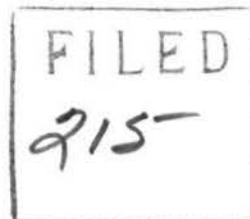
PROSECUTING ATTORNEYS:  
CONSTITUTIONAL LAW:  
UNITED STATES COMMISSIONER:

Under Article VII, §9 of the Constitution of Missouri, a person may not hold the office of prosecuting attorney and that of United States Commissioner at the same time.

OPINION NO. 215

October 16, 1969

Honorable Winston V. Buford  
Prosecuting Attorney  
Shannon County Court House  
Eminence, Missouri 65466



Dear Mr. Buford:

This is in response to your request for an official opinion on the question whether a prosecuting attorney may accept an appointment as a United States Commissioner and retain the office of prosecuting attorney upon the condition that said prosecuting attorney would not receive a salary but would retain the office and expenses as provided by law.

Article VII, §9, Constitution of Missouri 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."

The substance of your question is whether a person who performs the duties and exercises the powers of the office of prosecuting attorney may escape this language of the Constitution by not claiming or drawing the compensation fixed by law for that office.

The Supreme Court of Missouri has held that ". . . to permit public officers, elected or appointed, to receive, by agreement or otherwise, a less compensation for their services than fixed by law, would be contrary to the public policy of this state. . . ." *Reed v. Jackson County* 142 S.W.2d 862, 865 (Mo. en banc 1940).

An office of profit is one to which is attached a compensation for services rendered. 67 C.J.S., §3, p. 104. Inasmuch as the legislature has attached a compensation to the office of prosecuting attorney, it is clear that the legislature intended the office of prosecuting attorney to be an office of profit. Moreover, in view of the decision of the court in *Reed v. Jackson County*, *supra*, it is equally clear that an incumbent prosecuting attorney has no power

Honorable Wintson V. Euford

to transform that office from one of profit to an honorary office by not claiming or drawing the compensation fixed by law for that office. It appears therefore that a prosecuting attorney who performs the duties and exercises the power of that office, but who does not claim or draw the compensation fixed by law for such services, nevertheless holds an office of profit within Article VII, §9 of the Constitution of Missouri. As stated in Opinion No. 382 issued to you on October 29, 1968, there can be no doubt that a United States Commissioner appointed pursuant to 28 U.S.C.A., §631 must be considered a holder of an office of profit under the United States.

CONCLUSION

In view of the foregoing, it is the opinion of this office that under Article VII, §9 of the Constitution of Missouri, a person may not hold the office of prosecuting attorney and that of United States Commissioner at the same time.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,



JOHN C. DANFORTH  
Attorney General