

MERIT SYSTEM:
STATE EMPLOYEES:
CITIES, TOWNS AND VILLAGES:

A state merit system employee is not prohibited from accepting an appointive position with a city and holding both positions.

OPINION NO. 475

December 22, 1971



Honorable A. Basey Vanlandingham
Missouri Senate, 19th District
Post Office Box 117
Columbia, Missouri 65201

Dear Senator Vanlandingham:

This is in response to your request for our legal opinion on whether or not a state merit system employee is prohibited by Section 36.150 from taking an appointive nonpaying position with a city. Specifically you have asked:

"Does Section 36.150, RSMo, prohibit an employee, under the merit system, to take an appointive non-paying position of a city?"

It is the opinion of this office that a state merit system employee is not prohibited by Section 36.150 from accepting an appointive position with a city. The applicable language is as follows:

"No employee selected under the provisions of this law shall be a member of any national, state, or local committee of a political party, or an officer of a partisan political club. He shall take no part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen to express his opinion and to cast his vote. No such employee shall be a candidate for nomination or election to any public office except he resign, or obtain a regularly granted leave of absence, from such position." Section 36.150(5), RSMo 1969 (Emphasis added)

This language does prohibit a merit system employee from becoming a candidate for nomination or election to a public office unless

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he resigns or is granted a leave of absence. However, this language does not prohibit a merit system employee from accepting an appointive position with a city, although this position may be a public office. As long as the public office with a city is obtained by appointment and not by election, Section 36.150 does not prohibit the merit system employee from lawfully holding both positions.

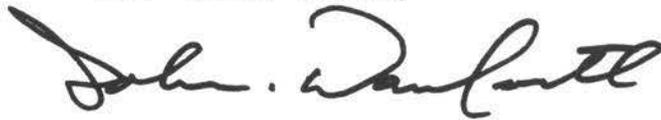
Attorney General's opinion, No. 45, dated May 1, 1953 to J. Rex James, holding that a state employee who is employed in a classified position under the merit system cannot be a candidate for election for the office of director of city schools, dealt exclusively with elective public offices. Nothing in this opinion should be construed to prohibit a state merit system employee from accepting an appointive position with a city.

CONCLUSION

It is the opinion of this office that a state merit system employee is not prohibited from accepting an appointive position with a city and holding both positions.

The foregoing opinion which I hereby approve was prepared by my assistant, Richard S. Paden.

Very truly yours,



JOHN C. DANFORTH
Attorney General