

October 11, 1973

OPINION LETTER NO. 241  
Answer by Letter - Bird

Honorable William E. Seay  
State Representative, District 129  
104A West Fourth Street  
Salem, Missouri 65560



Dear Representative Seay:

This letter is in response to your inquiry whether:

"May a person who has been elected City Marshal in a City of the 4th class in the State of Missouri with the Mayor-Council form of government also serve as water and sewer commissioner in a paid capacity?"

It is settled that unless the Constitution, a statute, or the common law proscribes the holding of two public offices by one individual, an individual may hold two offices simultaneously and is entitled to the statutory compensation for each office. U.S. v. Saunders, 120 U.S. 126 (1887); State ex rel. Zevly v. Hackmann, 300 Mo. 59, 254 S.W. 53 (Banc 1923); State ex rel. Koehler v. Bulger, 289 Mo. 441, 233 S.W. 486 (Banc 1921); State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636 (Banc 1896); Bruce v. St. Louis, 217 S.W.2d 744 (St.L.Ct.App. 1949). Since there is no constitutional or statutory prohibition in Missouri against the same person holding these offices simultaneously, the principal issue posed by your request is whether the office of city marshal of a city of the fourth class is compatible with the office of water and sewer commissioner at common law.

Two offices are intrinsically incompatible at common law when:

(a) one is subordinate to the other;

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- (b) one has supervisory power over the other;
- (c) one audits the other's accounts; or
- (d) one has power of appointment, or power of removal over the other.

See State ex rel. Klick v. Wittmer, 144 P. 648 (Mont. 1914); Attorney General's Opinion No. 167, O'Brien (April 19, 1963).

We find no provision in the Missouri statutes which may be construed as making the office of city marshal of a city of the fourth class incompatible with the office of city water and sewer commissioner of such city. Accordingly, the question of capability of these two offices turns upon the duties of these respective offices as provided by the ordinances of the city of the fourth class. Since this office does not have a copy of such ordinance, we express no opinion concerning their provisions. However, this office has previously determined that the offices of night marshal of a city of the fourth class and county treasurer are compatible insofar as state law is concerned. See Attorney General's Opinion No. 21, Dawes (March 5, 1956) (copy enclosed).

It is therefore our view that the position of city marshal of a city of the fourth class is compatible with the office of water and sewer commissioner of such city of the fourth class unless proscribed by ordinance and that the same person may hold both offices at the same time and receive the compensation established by law for each office.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 167  
4-19-63, O'Brien

Op. No. 21  
3-5-56, Dawes