

STATE SERVICE OFFICER: A Circuit Clerk may also serve as
an Assistant State Service Officer.
OFFICERS:

Circuit Clerk:

November 15, 1945



12/18

Honorable Roy F. Beaman
State Service Officer
Jefferson City, Missouri

Dear Sir:

Your letter of November 6, 1945, requesting an opinion from this department, reads as follows:

"The State Service Officer's Law provides among other things, that we may cooperate with all other agencies in carrying out the provisions of the State Service Officer's Law. This we have practiced to the fullest extent.

"I respectfully request your opinion as to the legality of a Circuit Clerk becoming an Assistant State Service Officer.

"The reason for asking this opinion is that the Veterans' organizations of a certain County in the State have selected their Circuit Clerk as their Service Officer. They are furnishing him a paid stenographer and we would like very much to have this group affiliated with this office."

In a careful research we fail to find any statute or any section under the Constitution of 1945, which prohibits a person from holding a county office and a state office, or serving as a circuit clerk and assistant state service officer. The Constitution does prohibit a state officer from holding an office under the United States, members of the organized militia or the reserve corps excepted, as appears in Article VII, Section 9 of the Constitution of Missouri 1945.

Since there is no constitutional prohibition under the Constitution or the statutes preventing a person from holding, at the same time, a state office and a county office, we must refer to the common law. In the case of *State ex rel. Walker, Attorney General, v. Bus*, 135 Mo. 325, which was passed upon by the Supreme Court of this state June 30, 1896, and which has not been overruled in any manner, it was held that under the common law the question as to whether or not a person could hold two county offices should depend upon whether or not the two offices were incompatible. This case held that a deputy sheriff of the City of St. Louis could also hold the position of school director in the City of St. Louis.

The general rule of common law appears in 100 A.L.R. 1164, as follows:

"It is a well settled rule of the common law that a person cannot at one and the same time rightfully hold two offices which are incompatible, and, thus, when he accepts appointment to the second office, which is incompatible, and qualifies, he vacates, or by implication resigns, the first office."

The case of *State ex rel. Walker, Attorney General, v. Bus*, supra, was followed in the case of *State ex rel. Langford v. Kansas City*, 261 S.W. 115. In that case the court held that the office of deputy sheriff was not incompatible with the office of city clerk. In paragraph 1 the court said:

"The only point raised by appellants in this case, which was not decided adversely to appellants' contention in the Prior Case, is the contention that relator's appointment and acceptance of the office of deputy sheriff on January 1, 1921, and his discharge of the duties of that office up to the time of trial, was incompatible with the office of clerk of the board of public works. The evidence showed that the duties of relator as such clerk were clerical, and the law fixes his duties as deputy sheriff as being to attend to all the duties of a sheriff. In support

of appellants' contention that such positions were incompatible, the following cases are cited: State ex rel. v. Walbridge, 153 Mo. 194, 54 S.W. 447; State ex rel. v. Draper, 45 Mo. 355; State ex rel. v. Lusk, 48 Mo. 242. And respondents cite as holding that such offices are not incompatible with each other, State ex rel. v. Bus, 135 Mo. 325, 36 S.W. 636, 33 L.R.A. 616 (court en banc) and Gracey v. St. Louis, 213 Mo. 395, 111 S.W. 1159."

In the Langford case the court, at page 116, said:

"In State ex rel. v. Bus, 135 Mo. 325, 36 S.W. 636, 33 L.R.A. 616, before the court, en banc, the question was most elaborately considered. MacFarlane, J., rendered the opinion, and it was held that the office of deputy sheriff and school director were neither incompatible at common law nor prohibited by the Constitution, and that the test was, not the physical inability of one person to discharge the duties of both offices at the same time, but some conflict in the duties required of the officers. The court said, at page 338 of 135 Mo.:

"The remaining inquiry is whether the duties of the office of deputy sheriff and those of school director are so inconsistent and incompatible as to render it improper that respondent should hold both at the same time. At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two -- some conflict in the duties required of the officers, as where one has some supervision of the other, is required to deal with, control, or assist him."

Also, in the case of State ex rel. v. Lusk, 48 Mo. 242, the Supreme Court of this state held that the office of the clerk of the circuit court was not incompatible with that of the clerk of the county court. This case was a case originating in the Circuit Court of Cole County, Missouri.

Since the matter set out in your request must be considered according to the common law, it results that the ruling must be made in accordance with the facts in each separate case. The general duties of the circuit clerk are set out in Sections 13293-13300, R. S. Mo. 1939, and provide that the clerk shall keep the records, papers, seal and property belonging to his office, and that he shall record the judgments, rules, orders and other proceedings of the circuit court, and make alphabetical indexes thereto; issue and attest all processes when required by law, affixing the seal of his office thereto, and account for all moneys coming into his hands on account of costs or otherwise, and to punctually pay over the same.

Under the provisions of the article dealing with the state service officer, we find the following sections providing the employment of assistants and the duties of the state service officer.

Section 15084 Mo. R.S.A. (reenacted Laws 1944, Extra Session, p. 38), provides as follows:

"The State Service Officer and all subordinates and employees of said State Service Officer shall familiarize themselves with all laws, both federal and state, relating to the rights of ex-service men and women, their legal representatives and dependents. The said State Service Officer shall aid and assist veterans of all wars, their dependents or their legal representatives. He shall promote and supervise the dissemination by all available means, information concerning the rights of veterans of all wars, their legal representatives and dependents, in the State of Missouri, under the laws of the United States and the rules and regulations of all the several United States veterans' bureaus, boards, commissions, or other United States departments or authorities

which are or may be in any manner concerned with the interest and welfare of veterans and their dependents; and shall aid and assist all veterans, their legal representatives and dependents, living in the State of Missouri, in preparing, presenting and prosecuting the claims of such veterans for compensation, pensions, insurance benefits, hospitalization, rehabilitation, and in all other matters in which they may have a claim against the United States of America or any State arising out of or connected with their service in the Military Forces of the United States of America, and in prosecuting such claims to their conclusion, when authorized and empowered to do so by such veterans, their legal representatives or dependents. The said State Service Officer shall, in his discretion, have the right to be designated as the attorney in fact by proper written powers of attorney executed by such veterans, their legal representatives or dependents, to accomplish the purposes in this act specified. He shall be authorized to accept, in carrying out the purposes of this Act, and for no other purpose, grants of services, personnel or money, from any Federal agency, or any political subdivision of the state, or from any organization or volunteer agency desiring to participate in the work of said department. It shall be the duty of the State Service Officer and his assistants, to cooperate with the several offices of the United States Employment Service, the United States Veterans' Administration, and all other federal and state offices legally concerned with and interested in the welfare of veterans and their dependents. The State Service Officer shall accept and receive for distribution, and shall distribute, any federal or state funds which are available or may hereafter become available for veterans of

the Military Forces of the United States of America, and if a bond be required as a condition to securing such fund or funds, the State Service Officer shall execute such bond or bonds as may be so required."

Section 15086 Mo. R.S.A. (Laws of 1944, Extra Session, p. 39), provides as follows:

"The said State Service Officer shall employ such assistants as may be necessary, and within the limits of funds appropriated for such purpose. All of such assistants shall have served in the Military Forces of the United States and shall have been honorably discharged therefrom. The State Service Officer shall employ such attorneys, consultants, clerks, stenographers and employees as may be necessary to properly carry out the provisions of this act, and within the limits of the funds appropriated therefor."

We can see nothing that is inconsistent and incompatible with the duties of a circuit clerk and the duties of an assistant state service officer as set out in the above sections. The two offices are entirely disconnected and there appears to be nothing inconsistent in the functions of the two.

In regard to the acceptance by the state service officer of the voluntary service of the personnel of all veteran, welfare, civic and service organizations, the Legislature has enacted Section 15086-C Mo. R.S.A. (Laws of 1944, Extra Session, p. 39), which provides as follows:

"The State Service Officer is authorized and empowered to arrange for and accept, through such mutual arrangements as may be made, the volunteer service, equipment, facilities, properties, supplies, funds, and personnel of all veteran, welfare, civic and service organizations, and other organized groups, either similar or dissimilar to the preceding organizations, and individuals, in furtherance of the purposes of this act."

Hon. Roy Beaman

(7)

The above section shows that the Legislature has intended that the state service officer be afforded the use of all services that may be volunteered in furtherance of the purposes of the State Service Officer Act, in assisting the veterans of all wars, their legal representatives and dependents, in the state of Missouri.

CONCLUSION

Therefore, it is the opinion of this department that a circuit clerk who has served in the military forces of the United States and been honorably discharged therefrom, may also serve as an assistant state service officer.

Respectfully submitted,

A. V. OWSLEY
Assistant Attorney General

APPROVED:

(Acting) Attorney General
W. O. JACKSON

AVO:GP