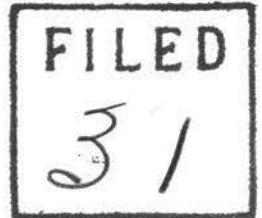


COUNTY OFFICERS:
DEPUTY ASSESSOR
ROAD OVERSEER:

Deputy assessor may also hold
the position of road overseer.

July 11, 1942

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Mr. J. L. Freeman
Assessor of Moniteau County
Tipton, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date which is as follows:

"I have a deputy assessor who has been appointed road overseer in this county. Is it legal for me to retain him as a deputy, as he will be drawing two salaries from the county?"

Section 8516, R. S. Mo., 1939, provides for the appointment of road overseers and their qualifications and salary. Section 8518 provides that the overseer is to give a bond. Section 8519 provides that the overseer shall make monthly statements and file them with the county clerk. Section 8520 provides that the road overseer shall keep the roads in repair according to the engineer's specification. Section 8521 provides that the overseer shall report to the County Court. Section 8522 provides numerous duties such as keeping roads in good repair, cutting and removing of brush, dragging or shovelling off the snow, etc. In addition he is a collector of poll tax providing the County Court shall by record adopt this Section. There are other sections dealing with ditching and other general road work. All of which compose the duties of the road overseer.

Section 10946 provides that the deputy assessor may be appointed, who is to take an oath the same as the assessor and provides that he shall have the same powers and duties as the assessor himself while he is employed as such deputy. The deputy assessor is paid out of the fees allowed to the assessor and is answerable to him directly. The assessor may hire or fire the deputy at his pleasure.

The only question here involved is whether or not these two offices are incompatible. There are a long line of cases in this State which hold to the doctrine that a person cannot hold two public offices when the duties of the same are incompatible. In the case of State ex rel. v. Bus, 135 Mo. 325, l.c. 330, the rule is set out as follows:

" * * * * * The rule at common law is well settled that one who, while occupying a public office, accepts another which is incompatible with it, the first will, ipso facto, terminate without judicial proceeding or any other act of the incumbent. The acceptance of the second office operates as a resignation of the first. State ex rel. v. Lusk, 48 Mo. 242; Mechem, Pub. Offices, secs. 420-426; Throop, Pub. Officers, secs. 30, 51.

"The rule, it is said, is founded upon the plainest principles of public policy, and has obtained from very early times. King v. Patten, 4 B. & Ad. 9.

"The rule has been generally stated in broad and unqualified terms, that the acceptance of the incompatible office, by whomsoever the appointment or election might be made, absolutely determined the original office, leaving no shadow of title in the possessor, whose successor may be at once elected or appointed, neither quo warranto nor a motion being necessary.' 1 Dill. Mun. Corp. (4 Ed.), sec. 225; People ex rel. v. Brooklyn, 77 N. Y. 503. * * * * *

It is further set out in State ex rel. McAllister v. Dunn, 277 Mo. 38, l.c. 44, as follows:

" * * * * * It is elementary law that one may not hold two offices the duties of which are incompatible. * * * * *

In the case of State ex inf. v. Breuer, 235

Mo. 240, 1.c. 247, the Court said as follows:

" * * * * * His term as judge had not expired and he had not resigned. Speaking for the court, Judge W. G. S. said: 'Under this provision a judge of a court of record is clearly ineligible to a seat in either house of the Legislature whilst he holds the office of judge. The existence of the two offices in the same individual is incompatible, and is peremptorily prohibited. * * * * *'"

In the early case of State of Missouri ex rel. v. Lusk, 48 Mo. 242, the Court said as follows:

"A writ of quo warranto was sued out of the Cole Circuit Court against the defendant to test his right to hold the office of county clerk, he having been elected to and having entered upon the duties of the office of clerk of the Circuit Court. The relator claims that by this act he has in effect surrendered the office of county clerk, for the reason that the duties of the two offices are incompatible in law. If this were so, there is no doubt that the acceptance of the second office would vacate the first (State ex rel. Owens v. Draper, 45 Mo. 355); and counsel have given some forcible illustrations of the difficulty arising under some circumstances in holding both offices by the same person. * * * * *"

The term "incompatible" is defined in the case of Johnson, 214. 2d 813, as follows:

"Term 'incompatible' is defined as not compatible, incapable of harmonizing or agreeing, mutually repelling, incongruous. Things are incompatible when they cannot coexist, and inconsistent when they are opposed to to each other."

Mr. J. L. Freeman

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The test, therefore, to determine whether or not the duties of two public offices are incompatible is whether or not the duties of those offices would directly conflict with each other making it so that a person holding the offices could not honestly and fairly administer the duties of the two offices. We cannot find such incompatibility in the office of deputy assessor and a road overseer. The duties of the two offices are absolutely different and are not conflicting in any manner. In passing, we might say that the deputy assessor does not derive his pay from his county but from the fees which the assessor is entitled to in his office.

CONCLUSION

It is, therefore, the opinion of this office that a person may hold the office of deputy assessor and road overseer in Moniteau County.

Respectfully submitted,

LAWRENCE I. BRADLEY
Assistant Attorney-General

APPROVED:

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(Acting) Attorney-General