

OFFICERS: County Coroner in 4th class county may serve simultaneously in office of police judge in 4th class city.

March 28, 1950.

Hon. Charles Ray Mabee,
Prosecuting Attorney
Putnam County,
Unionville, Missouri.

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Dear Sir:

This is in reply to your request for an official opinion from this department, which reads as follows:

"Mr. Charles Fowler of this County, who is the duly elected, qualified and acting Coroner by virtue of election was recently nominated to the office of Police Judge of the City of Unionville, a city of the 4th class.

"The present incumbent, the County Court and the City Council have questioned the right of the nominee to serve in the event he is elected. I would appreciate an opinion as to whether there is any law prohibiting the same person from holding the office of County Coroner in a 4th class county, and at the same time holding the office of Police Judge in a 4th class city."

There is no constitutional or statutory prohibition providing that one individual shall not hold the office of County Coroner in a 4th class county and at the same time hold the office of Police Judge in a 4th class city. However, there is a common law doctrine one individual may not hold incompatible and inconsistent offices.

In the absence of direct or positive statutory prohibition against one individual holding the two offices in question, the common law rule must be adopted as reiterated by the Supreme Court of Missouri in the case of State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, wherein the question was whether the duties of the office of deputy sheriff and those of school director were so inconsistent and incompatible that they should not be held by the same person at the same time. The court stated at l.c. 330:

"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.* * *

And at l.c. 338, the court stated:

"* * * At common law the only limit to the number of offices one person might hold is that they shall 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."

Section 7122, R.S. Mo. 1939, provides for election of a police judge in cities of the 4th class, confers jurisdiction on such police judge to hear and determine all offenses against the ordinances of the city in which he is elected and provides "that when such police judges shall be so elected, then the jurisdiction in this article hereinafter conferred upon the mayor to hear and determine cases for the violation of city ordinances shall be held to refer to the police judge elected under this section."

The only inquiry is whether under the common law rule stated above the duties of the office of county coroner in a 4th class county and those of a police judge in a 4th class city are so inconsistent and incompatible as to render it improper that the same person hold both offices at the same time. In measuring the nature of the duties attendant to the offices in question we find those duties not to be inconsistent or incompatible. The office of police judge has the duty to hear and determine offenses against the ordinances of the city. The duties, powers and jurisdiction of the police judge in a 4th class city would not conflict with those of the county office of coroner in a 4th class county. We find no conflict of interest, as where one is subordinate to the other and subject to some degree of supervisory control of the other.

CONCLUSION.

Therefore, it is the opinion of this department the office of County Coroner in a 4th class county and that of Police Judge

in a 4th class city are not so inconsistent or incompatible that sound public policy would make inappropriate the holding of both of said offices at the same time by the same individual.

Respectfully submitted,

JOHN E. MILLS,
Assistant Attorney-General.

APPROVED:

J. E. TAYLOR
Attorney-General

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