

OFFICERS:--Under Section 6853, individual cannot be member of board of public works of city and at the same time hold any other public office, whether membership on board occurred prior or after the appointment to other office.
(Sec. 7853 RSMo 1929)

C
O
P
Y

October 21, 1933.

FILED NO. 5



Mr. R. Wilson Barrow,
Prosecuting Attorney,
Macon, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I have been requested by Mr. C. O. Powell, Mayor of Macon, Missouri, to obtain an opinion from your office as to the application of Section 6853, R.S. Mo. 1929, to a member of the Board of Public Works of this City who also holds other official (not City) positions.

Mr. Powell wishes me to inquire relative to the status of one W. C. Brown, a member of the present Board of Public Works of Macon, Missouri, who has recently been appointed as a federal examiner under the new National Banking Act and who is also a member of the Macon School Board.

The Macon Board of Public Works, consisting of four members, was created three or four years ago, under Chapter 38, Article 31, R. S. Mo. 1929, and has control and supervision of the municipal electric light and water works plant in the City of Macon.

If your office can furnish me with an opinion on this matter soon, it will be appreciated."

Section 7853, R. S. Mo. 1929, provides as follows:

"Any member of said board of public works, who shall accept a nomination or appointment for any other office during his official term, shall be deemed thereby to have resigned as a member of said board, and his said membership shall thereby be ipso facto vacated."

As we construe the above section we believe that the Legislature intended that a member of the board of public works should not at the time of holding a position upon said board hold

any other office, whether it be city, county, state or federal. The above section provides that the holding of another office shall ipso facto vacate his membership upon said board. This is not an instance where the holding of two offices is dependent upon said offices being incompatible, but is an example of where it is prohibited to hold any other office while said individual is a member of the board of public works.

In 29 Cyc. 1383, it is said:

"But incompatible offices must be distinguished from forbidden offices, that is, offices for which the incumbents of certain offices are disqualified by statute. In such case the incumbent of the first office cannot accept the second office and the attempted acceptance of the second office will not be treated as a resignation of the first."

Under the provisions of Section 7853, it is unquestionably forbidden that the member of a board of public works should not hold any other office while being a member of that board. If, at the time of his acceptance of the appointment to office he was holding another office, then we believe that he did not become a legal member of the board of public works. The statute expressly provides that if he has already become a member of the board of public works and accepts another office, that his membership on said board shall ipso facto be terminated. If he could not, as a member of said board, accept another office and hold the position on said board, then it would be unreasonable to assume that while holding another office he could become a member of the board of public works of your city.

In view of the quotation above, the holding of any other office is forbidden, if the individual was holding an office at the time that he was supposed to become a member of the board of public works. He did not, as a matter of fact, become such member because the acceptance of the membership on said board will not be treated as a resignation of any previous office which he held.

It is therefore the opinion of this Department that if the member of the board of public works of your city held other public office at the time he was appointed as a member of the board of public works, that he did not legally become a member of said board. If a member of said board did not hold public office at the time of his appointment upon said board of public works and afterwards accepted any other office during his official term, he is thereby deemed to have resigned and his membership upon said board to be ipso facto vacated.

Section 7853 makes no distinction as to the nature of importance of the office accepted, whether it be municipal, state or federal, but is express in its terms that "the nomination or appointment for any other office" shall ipso facto remove him from said board.

Mr. R. Wilson Barrow,

-3-

October 21, 1933.

Very truly yours,

Assistant Attorney General.

APPROVED:

Attorney General.