

OFFICERS:  
DEPUTY SHERIFFS:

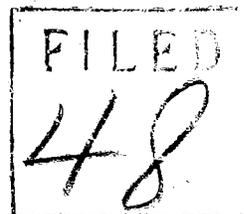
A person can hold the office of deputy **sheriff**  
and constable at the same time.

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January 16, 1941

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Mr. Fred Keller, Sheriff  
Andrew County  
Savannah, Missouri



Dear Sir:

We are in receipt of your request for an opinion,  
under date of January 13, 1941, which reads as follows:

"On January first I took my oath of  
office as sheriff of Andrew County,  
Missouri. In picking my deputies,  
I had considered appointing the  
constable of Nodaway township. How-  
ever, the question has arisen, as to  
whether a duly qualified constable  
could legally serve as deputy sheriff.

"I would appreciate it very much if  
you would send me your opinion in  
the above question within the next  
few days."

A deputy sheriff is not a state officer but falls  
under the class of county officers. It was so held in  
State ex rel. Walker, Attorney General, v. Bus, 135 Mo.  
325, 1. c. 337:

"A deputy sheriff is not, in our  
opinion, a state officer within the  
intent and meaning of said section  
of the constitution. In this section  
the officers are clearly classified  
by territorial jurisdiction and a  
sheriff falls under the class of  
county officers."

In a careful research we fail to find any statute  
or any section under the Constitution which prohibits a  
person from holding two county offices. The Constitution  
does prohibit a state officer holding an office under the  
United States as it appears in Section 4, Article XIV of  
the Constitution of Missouri. The Constitution of Mis-  
souri also prohibits, in counties or cities having more  
than two hundred thousand (200,000) inhabitants, the hold-  
ing, by anyone, of a state office and an office in any  
county, city or other municipality. This is set out in

## Section 18, Article IX of the Constitution of Missouri.

Since there is no constitutional prohibition under the Constitution or the statutes preventing a person from holding two county offices, we must refer to the common law. In the case of State ex rel. Walker, Attorney General, v. Bus, supra, 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 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, and in that case the court held that the office of a 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 that 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. (36 S. W. 639):

"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,

Mr. Fred Keller,

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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. Therefore, the question in your request is whether or not the duties of a deputy sheriff are incompatible with the duties of a constable. There is no question but that a deputy sheriff's duties and the duties of a constable are in common. A deputy sheriff can perform most of the duties that are performed by the constable and a constable can perform most of the duties performed by a deputy sheriff. Their duties are not antagonistic and in no way are their duties inconsistent.

#### CONCLUSION

In view of the above authorities it is the opinion of this department that since the duties of a deputy sheriff and the duties of a constable are not incompatible and are not inconsistent, a person can hold the office of deputy sheriff and constable at the same time.

Respectfully submitted

APPROVED:

W. J. BURKE  
Assistant Attorney General

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(Acting) Attorney General

WJB:DA