

COUNTY TREASURERS: The office of city attorney in a third class city when the duties of that office are limited by city ordinance to the prosecution of cases in police court is not incompatible with the office of county treasurer in a third class county.

January 29, 1951

Honorable Lane Harlan
Prosecuting Attorney
Boonville, Missouri



Dear Mr. Harlan:

We have your recent letter in which you request an opinion of this department. Your letter is, in part, as follows:

"On November 7, 1950, Thomas G. Woolsey was elected to the office of Treasurer of Cooper County, Missouri. At the time of his election and at the present time, after he has assumed his obligations of the office of treasurer, he was the duly elected city attorney of Boonville, Missouri. I would appreciate an opinion from your office, as to whether or not the two offices are incompatible so that they cannot be held by the same individual.

"If my views may be of assistance to you, I do not believe that the offices are necessarily incompatible. It may be well to state at this point that the sole duty of the City Attorney is to prosecute cases in Police Court. Other legal business and appeals from the Police Court to the Circuit Court are handled by the City Counsellor. * * *"

From your above quoted letter we deduce the fact that Mr. Thomas G. Woolsey as city attorney of Boonville has no duties other than that of prosecuting cases in Police Court, the duties ordinarily performed by city attorneys being within the scope of the duties of the City Counsellor. The City of Boonville is a third class city.

Section 98.330, RSMo. 1949, prescribes the duties of city attorneys in cities of the third class which duties are much

Hon. Lane Harlan

more numerous than you indicate are the duties of the city attorney of Boonville, Missouri.

However, Section 98.340, RSMo. 1949, provides as follows:

"In any suit or action at law or in equity brought by or against the city except in prosecutions begun before the police judge, the city council may, by resolution, employ an attorney or attorneys, and pay him or them a reasonable fee therefor; provided, that any city may, by ordinance, provide for the office of city counselor and his duties and compensation. Such city counselor when so provided for, shall represent the city in all cases in all courts of record in this state; shall draft all ordinances and contracts and all legal forms of every kind, and give legal advice to the council and other officers of the city, and perform such other duties as shall be prescribed by ordinance or shall be ordered by the council or the mayor. In any city where there is a city counselor, the duties of the city attorney shall be such as may be prescribed by ordinance." (6924, A. 1949 H.B. 2045)

We are of the opinion that, under the provisions of the above quoted section, the City Council of Boonville has the right to provide by ordinance for the office of city counselor. In the event that it does so it has the right to provide by ordinance that all of the duties ordinarily required of the city attorney, with the exception of the duty of prosecuting cases in police court, shall be performed by the city counselor. We are of the further opinion that if, under said sections, it has so transferred the duties ordinarily performed by the city attorney to the city counselor it has the further right to enact an ordinance defining the duties of the city attorney. With the above mentioned powers of the City Council in mind and also bearing in mind your aforesaid statement that the duties of the city attorney of Boonville are limited to the prosecution of cases in police court, we believe that we are warranted in assuming that the City Council of Boonville has by ordinance limited the duties of the city attorney to prosecutions in police court and that you have in your letter correctly stated the duties of the city attorney. Our opinion shall therefore be predicated upon this assumption.

The question before us, therefore, seems to be whether or not the performance of the duties of the office of the city attorney of Boonville, a third class city, whose duties are limited to

Hon. Lane Harlan

prosecution of cases in police court is incompatible with the performance of the duties of county treasurer of Cooper County, a county of the third class.

The duties of the city attorney of Boonville have been hereinabove discussed and we find no sections of the Missouri statutes specifically enumerating all of the duties of the county treasurer. We do find however that different sections impose different duties upon him and all of these duties pertain to the care of the public money of the county and of school districts, etc.

Section 54.040 RSMo. 1949, provides as follows:

"No sheriff, marshal, clerk or collector, or the deputy of any such officer, shall be eligible to the office of treasurer of any county."

The last above quoted section seems to be the only specific limitation as to eligibility for the office of county treasurer based upon the occupancy of other official positions.

We are of the opinion that since there is no law forbidding the holding of two public offices at the same time by the same person which is applicable to the offices of a city attorney, who has the limited duties above mentioned, and county treasurer and since there is no apparent conflict between the work of prosecuting cases in police court and the work of a county treasurer it is legal for Mr. Woolsey having been duly elected to each office to occupy them both. In this connection we quote as follows from the opinion of State ex rel. Walker v. Bus, 135 Mo. 325, l.c. 338, 339;

"* * *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.

"It was said by Judge Folger in People ex rel. v Green, 58 N.Y. loc. cit. 304; 'Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The

Hon. Lane Harlan

force of the word, in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. Thus, a man may not be landlord and tenant of the same premises. He may be landlord of one farm and tenant of another, though he may not at the same hour be able to do the duty of each relation. The offices must subordinate, one the other, and they must, per se, have the right to interfere, one with the other, before they are incompatible at common law."

We are of the opinion that the common law principle set forth in the above quotation to the effect that there must be conflict between the duties of the two offices involved before incompatibility exists is entirely applicable to the offices of city attorney of Boonville, Missouri and county treasurer of Cooper County as the duties of those offices have been above defined.

CONCLUSION

We are accordingly of the opinion that Mr. Thomas G. Woolsey having been duly elected city attorney of Boonville, Missouri and having been duly elected treasurer of Cooper County, may occupy both of these offices for the respective terms thereof.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

SMW:mw