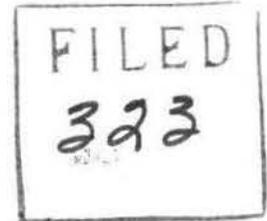


CITY COLLECTOR:  
CITY ASSESSOR:

When the office of city assessor and city collector are both elective offices under the ordinances of a city of the fourth class the duties of the office of city assessor are not repugnant or incompatible with those of the city collector and one person may hold both offices at the same time.

OPINION NO. 323

July 22, 1970



Honorable Harold W. Barrick  
Prosecuting Attorney  
Ralls County  
P. O. Box 278  
New London, Missouri

Dear Mr. Barrick:

This is in response to your request for an official opinion on the question which you submitted as follows:

"Where the offices of city assessor and city collector are both elective offices under the ordinances of a city of the fourth class, can one person hold both the office of city assessor and city collector at the same time?"

In general it may be said that one person may hold several public offices at the same time unless prohibited by a specific statute, constitutional provision or the common law rule against holding two offices simultaneously when such offices are incompatible.

We know of no specific statute or constitutional provision that would prohibit the simultaneous holding of offices of assessor and collector of a fourth class city and therefore must turn to the common law rule to determine the question.

The common law rule was stated in the case of State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 639-640 (1896) as follows:

". . . 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 the 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 others, is required to deal with, control,

Honorable Harold W. Barrick

or assist him. It was said by Judge Folger (People v. Green, 58 N. Y. 295): '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 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 towards 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.' . . ."

In order to apply the foregoing rule, we must examine the statutes relating to the duties of the two offices in question to determine whether there is such an inconsistency in the functions of the offices as to render them incompatible. The principal duties of the assessor are set forth in Section 94.190, RSMo, which provides in paragraph 1:

"In cities of the fourth class, the city assessor, jointly with the county assessor, shall assess all real and personal property in the city, and the assessment so made, after being passed upon by the board of equalization, shall be the basis upon which the board of aldermen shall make the levy for city purposes."

The principal duties of the collector are set forth in Section 95.360, RSMo, as follows:

"It shall be the duty of the city collector to pay into the treasury, monthly, all moneys received by him from all sources which may be levied by law or ordinance; also, all licenses of every description authorized by law to be collected, and all moneys belonging to the city which may come into his hands. He shall give such bond and perform such duties as may be required of him by ordinance."

Honorable Harold W. Barrick

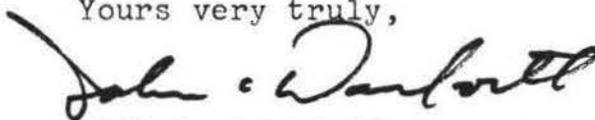
We believe that the foregoing statutory provisions relating to the principal duties of the office of assessor and the office of collector in fourth class cities are sufficient to show that no incompatibility exists between said offices. The duties and functions of one office are not inherently inconsistent or repugnant to the other. Neither office is superior to the other nor does one office have supervision over the other. Therefore, the common law rule of incompatibility is not violated by one person discharging the duties of the two offices.

CONCLUSION

It is the opinion of this office that when the office of city assessor and city collector are both elective offices under the ordinances of a city of the fourth class the duties of the office of city assessor are not repugnant or incompatible with those of the city collector and one person may hold both offices at the same time.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,



JOHN C. DANFORTH  
Attorney General