

COLLECTOR: The chief deputy is not required to resign
DEPUTY COLLECTOR: while running for the office of collector nor
is the chief deputy required to resign as chief deputy if elected collector between the
election and assuming the office of collector.

June 5, 2000

OPINION NO. 245-2000

The Honorable Mark Hampton
Representative, District 147
State Capitol Building
Jefferson City, MO 65101

Dear Representative Hampton:

You have asked the following questions:

My County Collector has chosen not to seek re-election but her Chief Deputy has filed for that seat. The questions posed to me are as follows:

- Can the Chief Deputy remain in her position or does she need to resign now?
- If the Chief Deputy is successful in winning the nomination in the Primary election, can she remain in that position or does she need to resign?
- If the Chief Deputy is successful in winning the county collector's seat in the General election, can she remain in that position until she takes office?

The qualifications to serve as County Collector are set out generally in Section 52.010 RSMo 1994. The only qualification set out in that statute is that the collector must be a resident of the county from which he is elected.

In your letter you do not identify the county for which the question is addressed, but we assume that it is either Shannon or Texas County, both of which are third class counties, and most likely Texas County. Section 52.271 RSMo 1994 provides "The county collector in each county of the third class is entitled to employ deputies and assistants," and there is no restriction in that section about a deputy being

a candidate for office. Section 52.310 RSMo does place an additional obligation on collectors and their deputies and assistants. That section provides that "No collector or holder of public moneys, or any assistant or deputy of such holder or collector of public moneys, shall be eligible or appointed to any office of trust or profit until he shall have accounted for and paid over all sums of which he may be accountable."

Sections 105.452 RSMo 1994 and Section 105.454 RSMo 1999 Supp. identify prohibited acts by elected and appointed public officials. There is no prohibition from running for elected office while serving in an appointive one.

In reviewing the statutes we have found a prohibition of a deputy collector running for county treasurer. See Section 54.040 RSMo 1994. If the legislature intended to prohibit deputy collectors from running for the office of collector, it would have included such a prohibition. By specifying that deputy collectors may not run for county treasurer and making no mention forbidding deputy collectors from running for collector, the legislature did not intend to limit deputy collectors from running for collector. Parvey v. Humane Society of Missouri, 343 S.W.2d 678 (Mo. App. 1961).

This office takes no position whether an individual can fulfill the obligations as deputy collector while campaigning to be elected collector. We do believe that it is the responsibility of the current collector that the deputy collector fulfills the responsibilities of that position if that deputy chooses to run for office while holding that position.

CONCLUSION

It is the opinion of this office that the chief deputy is not required to resign while running for the office of collector nor is the chief deputy required to resign as chief deputy if elected collector between the election and assuming the office of collector.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General