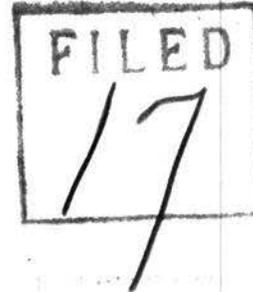


BOARD OF POLICE
COMMISSIONERS:

- Members may not accept other offices without forfeiting position of member of Board.

November 15, 1940

11/20



Hon. John M. Cleary, Jr.
Secretary
Board of Police Commissioners
Kansas City, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated November 4, 1940, which is as follows:

"The Board of Police Commissioners of Kansas City, Missouri, desires your opinion on the following question:

Mr. George Fiske, Police Commissioner, has been asked to serve as Major in the Third Missouri Regiment (Home Guard Unit) while the National Guard is in camp for a year. However, section 7505 of the Kansas City Police Act (Laws of Missouri 1939, page 549) provides as follows:

'Any one of said commissioners so appointed or any member of any such police force who, during the term of his office, shall accept any other place of public trust, or emolument, * * * shall be deemed to have thereby forfeited

and vacated his office as such commissioner or member of such police force.'

In addition, there are several members of the Department, including myself, who are considering joining the Home Guard.

Your opinion is therefore requested as to whether the acceptance of a commission as Major in the Third Missouri Regiment would cause Mr. Fiske to forfeit his office as Police Commissioner of Kansas City, Missouri. Since the Third Missouri Regiment is to be organized very shortly, we request that you give us an opinion upon the question as speedily as possible."

Section 7505 found in Laws of 1939, at page 549, referred to by you, is as follows -

"Any one of said commissioners so appointed or any member of any such police force who, during the term of his office, shall accept any other place of public trust, or emolument, or who shall knowingly receive any nomination for an office elective by the people, and shall fail to decline such nomination publicly within the five days succeeding such nomination, or shall become a candidate for the nomination for any office at the hands of any political party, shall be deemed to have thereby forfeited and vacated his office as such commissioner or member of such police force."

In addition to the foregoing statutory provision we believe that Section 18, Article 9, of the Missouri Constitution is authority for the statement that an officer of the militia or National Guard is a state officer. This section reads as follows -

"In cities or counties having more than two hundred thousand inhabitants, no person shall, at the same time, be a state officer and an officer of any county, city or other municipality; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities; but this section shall not apply to notaries public, justices of the peace or officers of the militia."

The principal implication of this section includes officers of the National Guard within the meaning of the term "state officer."

Furthermore, a member of the Board of Police Commissioners in Kansas City is prohibited from receiving "emolument." This term has been defined in State v. Dishman, 68 S. W. (2d) 797, l. c. 798, as follows -

"We read in 29 Cyc. 1428, note 72, that the term 'emoluments' means the profit 'which is annexed to the possession of office, as salary, fees, and perquisites' (Town of Bruce v. Dickey, 116 Ill. 527, 535, 6 N. E. 435, 439), pecuniary in

character (Reals v. Smith, 8 Wyo. 159, 168, 56 P. 690), and embraces 'all other proper receipts of the office not included within the terms "fees" or "commissions"' (Arapahoe County v. Hall, 9 Colo. App. 538, 49 P. 370, 372; Vansant v. State, 96 Md. 110, 128, 53 A. 711; Hoyt v. U. S., 10 How. 109, 135, 13 L. Ed. 348; Id., 10 How. 646, 13 L. Ed. 576)."

Since a Major or officer in the Missouri National Guard receives a salary and certain perquisites, the acceptance of such office would be a direct violation of Section 7505, supra. Although it seems to us that the Legislature might well have followed the exception set out in Section 18, Article 9, of the Missouri Constitution, and that, as a matter of public policy no conflict, so far as the public interest is concerned, would result from the acceptance of a commission in the Home Guard by a member of the Board of Police Commissioners, it is the conclusion of this department that the acceptance of such commission by a member of the Board of Police Commissioners of Kansas City, Missouri, would result in the forfeiture by such officer of his office as a member of the Board. On the contrary if a member of the Board is appointed an officer in the Missouri National Guard, or its successor, the Home Guard, which is not an office of public trust, and to which no perquisites are attached and no salary received, the statute would not be violated and his office as a member of the Board of Police Commissioners could not be declared forfeited.

Respectfully submitted,

APPROVED:

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Assistant Attorney General

COVELL R. HEWITT
(Acting) Attorney General

RLH:RW