

ELECTIONS;  
COUNTY AUDITOR: May be a candidate for another office  
without resigning as County Auditor.

April 18, 1940

H-19

Hon. John W. Mitchell  
Assistant Prosecuting Attorney  
Buchanan County  
St. Joseph, Missouri



Dear Sir:

This will acknowledge receipt of your letter  
of April 11, 1940, which is as follows:

"Our County Auditor was elected in the  
general election of 1938 for a four  
year term beginning January 1, 1939.  
He is contemplating making the race in  
the coming primary for sheriff in this  
County. I should like to have your  
opinion as to whether or not, under the  
above circumstances, he may be a candi-  
date for sheriff in the coming elections  
without first resigning his office as  
County Auditor."

We have carefully examined the provisions of  
Articles 10 and 11, Chapter 61, R. S. Mo. 1929,  
either of which might be applicable to Buchanan  
County, and find nothing therein that prohibits the  
County Auditor from becoming a candidate for another  
office while still holding the office of County Aud-  
itor. There being no expressed restriction in these  
articles we have searched the general statutes and  
Constitution for such a restriction and find none.

Section 10257, R. S. Mo. 1929, pertains to the  
declaration to be filed by a candidate for nomina-  
tion. The candidate is required to state in his  
declaration that "if nominated and elected to such  
office he will qualify". This provision, however,

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does not require the person to be eligible for the office he is seeking at the time of the primary or general election. In State ex rel. v. Breuer, 235 Mo. 240, it was contended that respondent could not hold the office of Circuit Judge because at the time of his nomination and election he was County Collector and had not at said time paid over to the County all moneys due it and made a final settlement. His term as Collector ended in March, 1911, while his term as Circuit Judge began in January, 1911. He resigned as Collector and made his final settlement before qualifying as Judge of the Circuit Court. The court held that this removed his disability, saying, l. c. 250:

"The word 'eligible' in reference to a candidate for a public office, is not always used by law-writers with the precise point in view that is presented by the learned counsel for the relator in this case, that is, whether it means eligible at the date of the election or appointment, or at the date of taking possession of the office. It may sometimes be used in reference to the one date and sometimes to the other and whether the reference is to the one or the other depends on the context and on the subject; in view of the context in which the word 'eligible' is used in section 19 of article 2 of the Constitution and of the particular subject to which it relates, I am satisfied that it refers to the date that the candidate is to take possession of the office."

We think this same principal applies to the instant situation in that the County Auditor, who desires to run for Sheriff, need only be eligible for the office of Sheriff at the time he qualifies and takes possession of the office. We make this explanation because of the rule that one person cannot hold incompatible offices. There can be no question but what the offices of County Auditor and Sheriff are incompatible, since the Auditor is required to check the records and accounts of the

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Sheriff on some occasions in counties where these statutes apply. As heretofore pointed out, while the County Auditor could not accept the office of Sheriff while holding office as Auditor, this objection can be obviated by his resignation, or, as was ruled in State ex rel. v. Bus, 135 Mo. 325, 330, the acceptance of the office of Sheriff would be an implied surrender of the office of County Auditor.

CONCLUSION.

It is therefore our opinion that the County Auditor of Buchanan County may become a candidate for the office of Sheriff of said County without resigning his present office.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney-General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney-General

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