

GENERAL ASSEMBLY: Member of General Assembly ineligible for appointment as a member of the local Board of Public Works for the City of Bowling Green, Missouri.

July 9, 1945

Honorable Edward V. Long
State Senator
Bowling Green, Missouri



Dear Sir:

In your letter of July 3, 1945, you requested an opinion of this department, which letter reads as follows:

"Will you please give me an opinion at once as to whether or not there is anything to prevent me, while serving as State Senator, from accepting an appointment as a member of the local Board of Public Works for the City of Bowling Green. It runs in my mind that there is some statute that would prevent my serving on such board but I would appreciate having your opinion."

We direct your attention to Article III, Section 12, of the Constitution of 1945. This section reads as follows:

"No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected no senator or representative shall accept any appointive office or employment under this

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state which is created or the emoluments of which are increased during such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public."

We think Section 7798, Missouri Revised Statutes Annotated, is also pertinent. This section reads as follows:

"Any member of said board of public works, who shall accept a nomination or appointment for any other office during his official term, shall be deemed thereby to have resigned as a member of said board, and his said membership shall thereby be ipso facto vacated."

It is apparent from the first sentence of Section 12, Article III, of the new Constitution that if a member of the local Board of Public Works for the City of Bowling Green is an office for which a salary is paid, it is prohibited by said section. This section prohibits the holding by a member of the Legislature of any lucrative office or employment. The second sentence of said section would also prohibit the holding of such an office if compensation is received, since such an office would be employment and would, therefore, fall under that provision of the section.

Section 7797, Missouri Revised Statutes Annotated, relating to the members of the board of public works, provides that "each member of said board shall receive such salary and give such bond as may be prescribed by ordinance." This section reads as follows:

"Not more than two members of said board shall belong to the same political party, and its administration shall in all respects be entirely nonpartisan. Each member of said board shall receive such salary and give such bond as may be prescribed by ordinance."

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We assume, therefore, that membership on said board would be a lucrative office or employment under the constitutional provisions quoted above.

If there is no compensation attached to the membership on the board of public works, it might be possible to construe Section 12 of Article III of the new Constitution as permitting a legislator to be a member of said board, since the provision in the first sentence thereof uses the word "lucrative" office or employment. We think it is not necessary to construe the provision as to this issue because of Section 7798, Missouri Revised Statutes Annotated, quoted above.

This section is applicable to the members of the board of public works of cities of the fourth class, in which classification the City of Bowling Green falls. It will be noticed that this section applies to nominations or appointments of members of the board of public works for any other office during their official terms, and does not specifically deal with situations where another office is held before appointment to the membership of the board of public works.

It is settled law in Missouri that a statute will not be construed so as to make an act of the Legislature a vain and useless one. *State v. Ball*, (Mo. App. 1943) 171 S. W. (2d) 787; *State ex rel. Mcallister v. Dunn*, (Mo. 1919) 209 S. W. 110. Statutes should be construed so as to give effect to the legislative intent. *State ex rel. Taylor v. Daves*, (1926) 281 S. W. 398, 313 Mo. 200; *Bassen v. Monckton*, (1925) 274 S. W. 404, 308 Mo. 641; *City of St. Louis v. James Broudis Coal Co.*, (Mo. App.) 157 S. W. (2d) 668. The letter of a statute must give way somewhat to its obvious intentment. *Rutter v. Carothers*, (1909) 122 S. W. 1056, 223 Mo. 631. The effect of a proposed interpretation of a law must be considered in ascertaining the legislative intent. *Straughan v. Meyers*, (1913) 187 S. W. 1159, 268 Mo. 580; *Bragg Road Dist. v. Johnson*, 20 S. W. (2d) 22, 323 Mo. 990. We must construe Section 7798, *supra*, in the light of these settled canons of statutory construction.

We think the purpose of the Legislature in enacting Section 7798, *supra*, was to prevent the holding by a member of the board of public works of any city of the fourth class of any other office during his official term. This purpose would

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not be carried out and, we think, the statute would be rendered useless and of little effect in prohibiting the evil which it was intended to strike at, if its construction was limited only to cases where a member of the board accepted a nomination or appointment to another office during his official term. It would be illogical to suppose that the Legislature intended to prohibit the holding or the acquiring of another office by a member of the board and, in turn, did not intend also to prohibit the converse of this situation, namely, the appointment to the board of any person who was at that time holding another public office.

A well settled common law principle of statutory and constitutional construction is to the effect that a public officer is prohibited from holding two incompatible offices. The Missouri courts have held that where the duties are inconsistent, antagonistic, or conflicting, as where one office is subordinate to the other, they are incompatible. *State v. Grayston*, (1942) 163 S. W. (2d) 335. The legislative branch of the government is superior in a great many respects to all political subdivisions of the state or their agencies. We think, therefore, that the board of public works, broadly speaking, is a subordinate agency to the Legislature of the state. Such being the case, offices held by one person in both would, we think, be subject to the rule against holding incompatible offices.

CONCLUSION

It is, therefore, the opinion of this department that a member of the Legislature cannot, during the term of his office, be appointed to the Board of Public Works for the City of Bowling Green, Missouri.

Respectfully submitted,

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APPROVED:

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