

*copy to Mr. Johnson*

**SCHOOLS:** One person cannot hold at the same time the office of  
**OFFICERS:** secretary and treasurer of a consolidated or town  
school district.

October 18, 1947

FILED

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Honorable J. R. Eiser  
Prosecuting Attorney  
Holt County  
Oregon, Missouri

Dear Sir:

This will acknowledge receipt of your request for an  
opinion which reads:

"Mr. G. Frank Smith, County Superintendent  
of Schools, has asked me to write you  
relative to the legality of one person  
on a six director school board being  
appointed by the board or serving as both  
secretary and treasurer for the school  
district.

"This situation has arisen in a consolidated  
district and a town district. In the con-  
solidated district one of the members of  
the board has been appointed both secretary  
and treasurer and is filling both positions.  
In the town district a person not a member  
of the board has been appointed both secre-  
tary and treasurer. In other words both  
the consolidated and town school district  
have consolidated the office of secretary  
and treasurer and the same person holds  
both offices.

"I have been of the opinion that under the  
provisions of Section 10470 R.S. Mo. 1939  
it was necessary for the board to elect a  
person secretary and another person treasurer  
of the district - that these offices could  
not be consolidated and one person perform  
the duties of both the secretary and trea-  
surer of the district."

There can be no question but that members of such school  
districts may also be appointed and serve as secretary or  
treasurer of said school districts. Section 10470, R. S. Mo.  
1939, specifically grants such authority:

"Within four days after the annual meeting, the board shall meet, the newly elected members, who shall be qualified by the taking of the oath of office prescribed by Article 14, Section 6, of the Constitution of Missouri, and the board organized by the election of a president and vice-president, and the board shall, on or before the fifteenth day of July of each year, elect a secretary and a treasurer, who shall enter upon their respective duties on the fifteenth day of July; said secretary and treasurer may be or may not be members of the board. No compensation shall be granted to either the secretary or the treasurer until his report and settlement shall have been made and filed or published as the law directs. A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed, bill approved or warrant ordered unless a majority of the whole board shall vote therefor. When there is an equal division of the whole board upon any question, the county superintendent of schools, if requested by at least three members of the board, shall cast the deciding vote upon such question, and for the determination of such question shall be considered as a member of such board. The president and secretary, except as herein specified, shall perform the same duties and be subject to the same liabilities as the presidents and clerks of the school boards of other districts."

The only remaining question is, may the same person hold both offices of secretary and treasurer at the same time? It is apparent that our conclusion will be the same in either case, whether it be a consolidated or town school district, since both are organized in the same manner.

Under the common law, the only limit to the number of offices one person might hold at the same time was that they should be compatible and consistent. Furthermore, that the incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices. The rule at common law is well stated in Volume 46 C.J., Section 46, page 941, and reads:

"At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But where the functions of two offices are inconsistent, they are regarded as incompatible. The inconsistency, which at common law makes offices incompatible, does not consist in the physical impossibility to discharge the duties of both offices, but lies rather in a conflict of interest, as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power to remove the incumbent of the other or to audit the accounts of the other. The question of incompatibility does not arise when one of the positions is an office and the other is merely an employment."

In State ex rel. v. Bus, 135 Mo. 325, l.c. 338, the court said:

"The remaining inquiry is whether the duties of the office of deputy sheriff and those of school director are so inconsistent and incompatible as to render it improper that respondent should hold both at the same time. 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 a 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 other, is required to deal with, control, or assist him."

There are some constitutional provisions which preclude certain officers from holding more than one office such as will be found in Section 9, Article VII and Section 12, Article III of the Constitution of Missouri, 1945. However, neither

of those provisions are applicable in the instant case.

There is no specific constitutional inhibition against one person holding both of said offices in question, and unless the duties of the two offices conflict and are inconsistent with each other or there is some statutory inhibition against holding both offices at the same time, then your request should be answered in the affirmative. This will require an examination of the statutes prescribing the particular duties, obligations and liabilities respecting said officers. So far as we are able to determine, the courts in this state have never passed on the validity of one person holding the offices of treasurer and secretary appointed by the board of directors of such school districts.

One of the cardinal rules of statutory construction is to determine the legislative intent, if possible, and give it that construction. See *Artophone Corporation v. Coale*, 133 S.W. (2d) 343, 345 Mo. 344.

In reading Section 10470, supra, it is apparent that the Legislature never contemplated that one person should hold both offices. This is borne out by using such phrases as "on or before the fifteenth day of July of each year, elect a secretary and a treasurer, who shall enter upon their respective duties on the fifteenth day of July; \* \* \* \* \* No compensation shall be granted to either the secretary or the treasurer until his report and settlement shall have been made and filed or published as the law directs."

Section 10477, R. S. Mo. 1939, requires the appointed treasurer before entering upon the duties of his office to enter into a bond to the State of Missouri, which bond shall be approved by said board, conditioned that he will render a faithful and just account of all money that may come into his hands as treasurer and otherwise perform the duties of his office. Furthermore, said bond, under the statute, is required to be filed with the secretary of said board, and in case of any breach of the conditions of said bond, the secretary of said board may cause suit to be brought thereon. Under Section 10470, R. S. Mo. 1939, it further requires the president and secretary of such boards to perform the same duties and be subject to the same liabilities as presidents and clerks of the school boards of other districts. Section 10366, R. S. Mo. 1939, requires the president of the board to sign all

warrants drawn and such warrants shall be countersigned by the district clerk. Section 10429, R. S. Mo. 1939, further provides that upon order of the board of directors, it shall be the duty of the district clerk to draw warrants in favor of any party in whom the district has become legally indebted. Also Section 10501, R. S. Mo. 1939, requires a detailed statement of all receipts of school moneys shall be published showing the source of said money, all expenditures and on what account, also the present indebtedness of the district and its nature, rate of taxation for all purposes for the year, and further requires said statement shall be attested by the president and secretary of said board.

From a casual examination of the foregoing statutory provisions, it is not difficult to see wherein the duties of the two offices of secretary and treasurer of such school districts do conflict and are inconsistent. Furthermore, as hereinabove stated, there can be no question but that the Legislature, in creating the two offices, intended that they should be separate and distinct from each other, and that one person should not hold both offices at the same time.

#### CONCLUSION

Therefore, it is the opinion of this department that members of the board of directors of consolidated school districts and town districts may be appointed as either secretary or treasurer of their respective school districts, but cannot serve as both secretary and treasurer. It is the further opinion of this department that no other person appointed by the board of directors of such school districts can serve at the same time as secretary and treasurer of said school district for the reason that the duties of the two offices are conflicting and incompatible.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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