

OFFICERS: Deputy county clerk in fourth class county may also serve as county highway engineer.

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Honorable John A. Johnson
Prosecuting Attorney
Reynolds County
Centerville, Missouri

Dear Sir:

This is in reply to your request for an opinion which reads as follows:

"Can a Deputy in the Office of the County Clerk in a County of the Fourth Class who is qualified to serve as County Highway Engineer be appointed to the position of County Highway Engineer in a County of the Fourth Class by the County Court and receive compensation for the services rendered as County Highway Engineer, provided the duties and hours of service in the two positions do not conflict in anyway?"

The general principle of law relating to whether a person may at the same time hold two public offices is found in Corpus Juris, Volume 46, page 941, et seq:

"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."

The leading case in Missouri is *State ex rel. vs. Bus*, 135 Mo. 325, l.c. 338, wherein the court in discussing this question 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.

"It was said by Judge Folger in *People ex rel. v. Green*, 58 N. Y. loc. cit. 304:

"Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. Thus, a man may not be landlord and tenant of the same premises. He may be landlord of one farm and tenant of another, though he may not at the same hour be able to do the duty of each relation. The offices must subordinate, one the other, and they must, per se, have the right to interfere, one with the other, before they are incompatible at common law."

We have examined the statutes relevant to the duties of the county highway engineer and county clerk in counties of the fourth class, and we are of the opinion that the duties

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are not incompatible and do not conflict so as to prevent the same person from acting as a deputy county clerk and also as county highway engineer.

CONCLUSION

Therefore, it is the opinion of this department that a deputy county clerk in a county of the fourth class may also serve as county highway engineer.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JRB:VLM