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PUBLIC ADMINISTRATOR: Person may hold office of public  
SCHOOL BOARDS: administrator and be a member of the  
COUNTY SCHOOL BOARDS: county school board at the same time.

FILED  
397

December 11, 1964

OPINION NO. 397

Honorable Charles G. Hyler  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

Dear Mr. Hyler:

In your letter of November 24, 1964, you request an official opinion from this office on the following question:

"The Public Administrator, Elect, of St. Francois County expects to run for election, in April, as a member of St. Francois County School Board from the First County Court District of St. Francois County. The question that I am presenting to you and the opinion I am requesting is: Can a person who is holding the office of Public Administrator of a County also hold an office as a member of a County School Board?"

We are unable to find anything in the constitution or statutes prohibiting dual office holding as to the two offices in question. The only question which arises is, "Are the two offices compatible; might there be any conflict of interest between the two?"

67 C.J.S., page 133, Section 23, Officers, states the rule as follows:

"a. In General

"At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time if there is no

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inconsistency in the functions of such offices; but a public officer is prohibited from holding two incompatible offices at the same time. The question of incompatibility depends on the circumstances of the individual case, and conflict of interest is generally the determining factor."

42 Am. Jur., Public Officers, page 926, Sections 58 and 59, states that under the common law, double office holding is not restricted except by constitution or statute unless the functions of the two offices intrude. If the offices are compatible, there is no inhibition against the same person holding more than one office.

Section 70, 42 Am. Jur., defines in some measure what constitutes incompatibility saying that, " \* \* \* the courts, \* \* \* are prone to avoid the formulation of a general definition and content themselves with the discussion of specific cases \* \* \*." But generally, they are "considered incompatible where such duties and functions are inherently inconsistent" and "antagonism would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices."

The case of State ex rel. Walker v. Bus, 135 Mo. 325, compares the office of school director and deputy sheriff and finds them not to be incompatible. The court said, l.c. 338, 339:

"V. 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

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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.

\* \* \* \* \*

"Sheriffs are given power, and it is made their duty, to preserve the peace, arrest and commit to jail all felons and traitors, execute all process and attend upon courts of record.

"The board of directors of the St. Louis public schools has charge, control and management of the public schools and of all the property appropriated to the use of the public schools within said city.

"We are unable to discover the least incompatibility or inconsistency in the public functions of these two offices, or where they could by possibility come in conflict or antagonism, unless the deputy sheriff should be required to serve process upon a director as such. We do not think such a remote contingency sufficient to create an incompatibility. The functions of the two offices should be inherently inconsistent and repugnant. *State ex rel. v. Goff*, 15 R. I. 507.

"It has been held in this state that the office of clerk of the circuit court was not incompatible with that of clerk of the county court. *State ex rel. v. Lusk*, 48 Mo. 242. The possibility of a conflict in the duties of these two offices seems to me to be greater than in those of deputy sheriff and school director.

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"These two offices then being neither repugnant to the constitutional or statutory prohibitions, nor incompatible, they may properly be held by one person. Judgment of ouster is denied. All the judges concur."

On this same subject in Bruce v. City of St. Louis, 217 S.W. 2d 744, the court said, at 748:

"The limitation at common law upon the holding of two or more offices at one and the same time extends no farther than to prohibit the holding of incompatible offices. Any further inhibition must be constitutional or legislative."

Our Supreme Court, en Banc, in State v. Grayston, 163 S.W. 2d 335, l.c. 339, sets out the rule as follows:

"\* \* \* The settled rule of the common law prohibiting a public officer from holding two incompatible offices at the same time has never been questioned. The respective functions and duties of the particular offices and their exercise with a view to the public interest furnish the basis of determination in each case. Cases have turned on the question whether such duties are inconsistent, antagonistic, repugnant or conflicting as where, for example, one office is subordinate or accountable to the other."

The office of public administrator concerns itself with the handling of estates and guardianships and is limited practically without exception to probate matters. (Section 473.730, et seq., RSMo 1959.)

As a member of the county board of education, the officeholder's duties would pertain solely to school reorganizations (Section 165.657, et seq.). We can see no possible connection whatsoever between the two offices nor can we conceive of any situation where a conflict might arise.

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In the absence of either constitutional or legislative sanctions we can see no inconsistency in holding the office of public administrator and that of an elective member of a county board of education at one and the same time.

CONCLUSION

Therefore, it is the conclusion of this department that under the authorities and for the reasons stated herein, one may hold the office of public administrator and be a member of the county board of education at the same time.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, O. Hampton Stevens.

Yours very truly,

  
THOMAS F. EAGLETON  
Attorney General