

August 29, 1969

OPINION LETTER NO. 139
Answered by Letter-Curtis

Honorable Alvin B. Walker
Prosecuting Attorney
Mercer County
Princeton, Missouri 64673

Dear Mr. Walker:

This letter is in response to your request for an opinion on two questions:

I.

Can a retired judge, having been designated a special commissioner for life under Section 476.450 RSMo, 1959, also hold the office of probate and magistrate judge of a fourth class county of Missouri and still draw the compensation provided by law for both services?

We note that Article V, Section 24, Missouri Constitution 1945, declares in part:

"No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business, except probate judges during their present terms."

The question is whether or not a special commissioner is compensated for "public service" within the meaning of Article V, Section 24 and Section 482.030 (2). Compensation under Section 476.450 is not an automatic incident of long and honorable service; rather the retired judge must elect to receive it (Section 476.500), and by so electing he binds himself to

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temporary duty by call from the Supreme Court (Section 476.460). Rendering oneself subject to special duty of this nature clearly must be considered a "public service". This commitment to public service is a prerequisite to receiving any compensation under Section 476.450 et seq. Thus a probate and magistrate judge would necessarily be receiving "additional compensation for . . . other public service" if he continued to receive compensation as a special commissioner.

Therefore it is the opinion of this office that a special commissioner who has been elected to the office of probate and magistrate judge of a fourth class county cannot continue to receive compensation as a special commissioner under Sections 476.450 et seq. because such practice would be in violation of Article V, Section 24, the Missouri Constitution and Section 482.030 (2) RSMo.

II.

In the event he chooses to do so, can a retired judge and special commissioner voluntarily waive the retirement pay as a special commissioner for an indefinite time and then at his election again resume the same at some future time?

Sections 476.450 et seq. contain no provision as to when a retired judge must elect to request a special commission from the governor, nor does the statute prohibit a resignation and subsequent second election. We note however that an attempt to merely waive compensation would raise serious questions of incompatibility between offices.

Therefore, it is the opinion of this office that there appears to be no statutory prohibitions against a special commissioner resigning his commission to serve the public in another capacity, and at the conclusion of such additional service reelecting to obtain his special commission and the incidents thereto.

Very truly yours,

JOHN C. DANFORTH
Attorney General