

Offices of County Collector and County Assessor
not one and one person may serve as County Assessor
and Deputy Collector at the same time.

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January 4th, 1949.

1-11-49

Hon. Paul Boone,
Prosecuting Attorney, Ozark County,
Gainesville, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of December 9th, 1948, in which you request an opinion of this department. Your letter, omitting caption and signature, is as follows;

"I desire your opinion as to whether or not a County Assessor may also hold the position of Deputy Collector or Clerk in the Collector's office, when the duties require him to actually collect taxes, issue receipts, make out apportionments and otherwise attend to the office of Collector."

Under the provisions of the Constitution of Missouri, adopted in 1945, there are only two clauses therein which relate to the holding of two offices by the same person. One of these is Section 9 of Article 7 of the Constitution which provides as follows:

"No person holding an office of profit under the United States shall hold any office of profit in this State, members of the organized militia or of the reserve corps excepted."

It is, of course, readily apparent that the above constitutional provision would not apply to two persons holding two county offices.

The other constitutional provision referring to the question of one person holding more than one office is Section 12, Article 3 of the Constitution of Missouri, 1945, and pertains only to the members of the State Legislature. Under this provision, a member thereof will forfeit his office therein if he accepts any lucrative office or employment under the United States, State of Missouri or any municipality thereof. However,

as in the case of the other constitutional provision set out herein, this provision will not affect the instant question.

We have searched the statutes of the State of Missouri but we fail to find any statutory provisions which will aid us in the solution of your problem. Therefore, we must turn to the decisions of the courts of this State in order to find an answer to the question. The settled rule of the common law seems to be that one person can not hold two incompatible offices at the same time. In the case of State ex rel McAllister vs Dunn, 209 S.W. 110, 277 Mo. 38, the Supreme Court of Missouri said:

"It is elementary law that one can not hold two offices, the duties of which are incompatible."

Also see State ex rel Gragg vs Barrett et al, 180 S.W. (2), (Mo. Sup). In the McAllister case, supra, a deputy collector was also serving as Treasurer of the County and it was held that the two offices were incompatible. However, it does not seem that the courts of this State have ever passed on the incompatibility of the two specific offices mentioned in your opinion request. Consequently, we must examine briefly the duties of each office in order to arrive at a conclusion.

A County Assessor is charged with the duty of assessing all the property, both real and personal, in the County for the purpose of determining the amount of taxes due. He also must sit on the Board of Equalization and the Board of Appeals both of which review the assessment of property made by the Assessor. However, the Assessor has no duties to perform respecting the collection of taxes nor has he any other duties which would be incompatible with the office of County Collector.

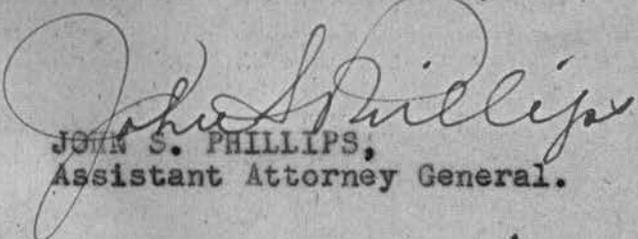
The County Collector is charged with the collection of all county taxes after they have been assessed by the Assessor and passed on by the Board of Equalization and Board of Appeals. He has no discretionary powers along this line and must collect the amount of taxes on the books as delivered to him by the County Clerk. Therefore, we find that he has no duties which would be incompatible with those of the County Assessor. Consequently this department concludes that one individual can hold the office of County Assessor and also serve as Deputy County Collector.

CONCLUSION.

It is therefore the opinion of this department that the offices of County Assessor and County Collector are not incompatible and thus one person can act both as County Assessor

and also serve as Deputy County Collector.

Respectfully Submitted,


JOHN S. PHILLIPS,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
Attorney General.

JSP/pw