

Tenn. Op. Atty. Gen. No. U86-77 (Tenn.A.G.), 1986 WL 222696

*1 Office of the Attorney General

State of Tennessee

Opinion No.

U86

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April 30, 1986

The Honorable Bill H. McAfee
Representative
27th District
104 War Memorial Building
Nashville, Tennessee 37219

Dear Representative McAfee:

You have requested an opinion from this office on the following question:

QUESTION

Is a member of the Red Bank City Commission prohibited from holding office as a member of the Board of County Commissioners of Hamilton County?

OPINION

A member of the Red Bank City Commission is not prohibited from holding office as a member of the Board of County Commissioners of Hamilton County.

ANALYSIS

You have indicated that the City of Red Bank operates under the provisions of the City Manager-Commission charter pursuant to [T.C.A. § 6-18-101](#), et seq. There is nothing in this statute which would prohibit a city commissioner from being elected to a county legislative body. Likewise, [T.C.A. § 5-5-102](#) pertaining to membership on the Board of County Commissioners, does not prohibit a city commissioner from simultaneously serving in this body.

An examination of the applicable conflict of interest statutes concerning county and city officials reveals that there is no proscription against a person simultaneously holding the office of city commissioner as well as county commissioner. [T.C.A. §§ 12-4-101, 6-54-107](#). These statutes apply to situations in which a governmental official has a personal interest in, or could personally gain from, deals or relationships his government might enter, which his official position might enable him to help bring about or influence.

Neither does it appear that concurrent service as county commissioner and city commissioner violates [Article II, Section 26, of the Tennessee Constitution](#) providing in part, “nor shall any person in this State hold more than one lucrative office at the same time.” This provision has been interpreted to forbid a person only from holding more than one lucrative office in the state government at the same time, and not to apply to local, either municipal or county, office holding. [Phillips v. West, 187 Tenn. 57, 65-66, 213 S.W.2d 3 \(1948\)](#); [Boswell v. Powell, 163 Tenn. 145, 147-149, 43 S.W.2d 495 \(1931\)](#). Since neither of the offices under consideration is an office in the state government, a person serving simultaneously in them would not violate [Article II, Section 26](#).

There is a well-recognized common law prohibition against a public officer holding two incompatible offices at the same

time. See [State ex rel. Little v. Slagle, 115 Tenn. 336 89 S.W. 326 \(1905\)](#). Another aspect of the same common law principle dictates that the acceptance of a second office which is incompatible with one already held automatically terminates the first office “without judicial proceedings of any kind.” [State v. Thompson, 193 Tenn. 395, 399, 246 S.W.2d 59, 61 \(1952\)](#), citing, *State ex rel. Little v. Slagle*, supra. The issue of incompatibility of necessity depends upon the circumstances of each case. 67 C.J.S. Officers § 27. The issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one office interferes with the performance with those of the other. *Id.* However, we know of no inherent inconsistency, incompatibility or conflict between the offices under discussion which would prohibit the same person from holding them concurrently as a matter of common law. But conceivably circumstances could develop during a multiple tenure such as would make the offices so incompatible that one could not continue to hold them simultaneously.

*2 Finally, in the absence of any express statutory prohibition, constitutional impediment, or apparent incompatibility, an individual may properly hold both offices simultaneously.

Sincerely,

W.J. Michael Cody
Attorney General and Reporter
John Knox Walkup
Chief Deputy Attorney General
Raymond S. Leathers
Assistant Attorney General

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