S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 02-106

Collinwood City Judge Serving as Collinwood City Attorney

QUESTION

May the Collinwood City Judge also serve as the Collinwood City Attorney?

OPINION

No, this service is prohibited under Tenn. Code Ann. § 6-54-107(a). In addition, the offices are incompatible under the common law.

ANALYSIS

This opinion concerns whether the Collinwood City Judge may also serve as the Collinwood City Attorney. Collinwood is incorporated under the City Manager-Commission Charter, Tenn. Code Ann. §§ 6-18-101, *et seq.* Tenn. Code Ann. § 6-21-501 authorizes the board of commissioners of a city operating under this charter to appoint a city judge to serve "at the will of the board." A city judge appointed under this section has jurisdiction "in and over all cases for the violation of and all cases arising under the laws and ordinances of the city." This Office has concluded that the Collinwood City Judge may be employed as the delinquent tax attorney for Wayne County. Op. Tenn. Atty. Gen. 99-229 (December 6, 1999). But, for the reasons discussed in this opinion, the Collinwood City Judge may not also serve as the Collinwood City Attorney.

Tenn Code Ann. § 6-21-202 addresses the position of city attorney for a city operating under the City Manager-Commission Charter. Under that statute, the city attorney will "[d]irect the management of all litigation in which the city is a party, including the functions of prosecuting attorney in the city courts;" and "[r]epresent the city in all legal matters and proceedings in which the city is a party or interested, or in which any of its officers are officially interested[.]" Tenn. Code Ann. § 6-21-202(1) & (2). The city attorney receives a salary to be fixed by the board of commissioners. Tenn. Code Ann. § 6-21-202(b).

Tenn. Code Ann. § 6-54-107(a) provides in relevant part:

> No person holding office under any municipal corporation shall, during the time for which such person was elected or appointed, be

> capable of contracting with such corporation for the performance of any work which is to be paid for out of the treasury.

The statute governing the position of city attorney provides that the board of commissioners sets the city attorney's salary. Therefore, it appears that the city attorney is a city employee or contracts with the city as an independent contractor. A city judge is an officer of the municipal corporation. Under Tenn. Code Ann. § 6-54-107(a), the city judge is prohibited from contracting with the city for the performance of work to be paid for out of the treasury. We think this prohibition includes acting as the city attorney, either as an independent contractor or as an employee of the city.

Even if that statute does not prohibit the judge from serving in that position, the two positions are incompatible under the common law. This Office has concluded that the same person may not serve as city attorney and city judge for New Johnsonville, for several different reasons, among them that the two positions are incompatible under the common law. Op. Tenn. Atty. Gen. U97-047 (October 14, 1997). Similarly, the Collinwood City Judge may not serve as the Collinwood City Attorney. A part-time city judge with jurisdiction only over municipal ordinance violations is subject to the Code of Judicial Conduct, with some exceptions. *See* Tenn. R. Sup. Ct. 10, Application of the Code of Judicial Conduct, ¶ C. Service as Collinwood City Judge and Collinwood City Attorney would violate both the common law prohibition against serving in incompatible offices and the requirement that a judge act as a neutral arbiter. *See, e.g.,* Tenn. R. Sup. Ct. 10, Canon 2.A ("A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.")

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