S T A T E O F T E N N E S S E E
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Opinion No. 08-129

Incompatible Offices: County Commissioner and City Mayor

QUESTION

Are the offices of Mayor of Kingston and Roane County Commissioner incompatible under the common law doctrine of incompatible offices?

OPINION

Neither of these officials supervises or appoints the other. No Tennessee court has addressed whether performance of the duties of one of these offices interferes with performance of the duties of the other, or whether occupation of both offices by the same individual is detrimental to the public interest so that the offices are incompatible under the common law. Only a Tennessee court can make a binding determination on this issue.

ANALYSIS

This opinion addresses whether the offices of Mayor of the City of Kingston and Roane County Commissioner are incompatible under the common law.[1] As an initial matter, we note that no constitutional provision, statute, or charter provision prohibits an individual from holding both these offices at the same time. The Tennessee Constitution, Article II, Section 26, prohibits a person from "hold[ing] more than one lucrative office at the same time." The term "office" has been construed by Tennessee courts to mean "state office." *Phillips v. West*, 187 Tenn. 57, 65-66, 213 S.W.2d 3 (Tenn. 1948); *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (Tenn. 1931). The offices of Mayor of the City of Kingston and Roane County Commissioner are local offices and, therefore, are not covered by the prohibition of Article II, Section 26.

Under the Kingston City Charter, the Mayor and Councilmen are elected by city voters to four-year terms. Kingston City Charter, § 3.03. Section 4.02 provides:

[1] The request asks whether the offices of City Mayor and County Commissioner are incompatible. Material included with the request, however, indicates the real issue is whether the offices of Mayor of the City of Kingston and Roane County Commissioner are incompatible. Because the issue of common law incompatibility turns on specific facts and circumstances and private acts define the Mayor's duties, we address the narrower question that has prompted the request.

> Oath of office. Before entering upon the duties of their offices the Mayor and each Councilman shall take an oath before any officer authorized to administer oaths to discharge honestly and faithfully the duties of their respective offices without partiality, favor or affection.

Kingston City Charter, § 4.02.

The Charter does not make the office of City Mayor a full-time position. The City Mayor presides at council meetings. Kingston City Charter, § 4.08. The Mayor has a vote on all matters, but no veto power. *Id.* Section 4.10 provides:

> Mayor to be ceremonial head of city, sign documents, etc. The Mayor shall be the ceremonial head of the City, shall sign ordinances and resolutions on their final passage, shall sign deeds, bonds and contracts when authorized by the Council to do so, shall not have any regular administrative duties, and shall perform only such duties as shall be specifically conferred on or required of him by law or this charter.

Kingston City Charter, § 4.10. A full-time City Manager appointed by the City Council, including the Mayor, is the chief administrative officer of the City. Kingston City Charter, § 5.01. No member of the Council is eligible to be City Manager during his or her term of office or for two years thereafter. *Id.* Section 5.03 provides:

> Council-manager relations generally. The manager shall be responsible to the council for the administration of all units of the city government under his jurisdiction and for carrying out policies adopted by the council. Except for the purpose of inquiry, the council and its members shall deal with the administrative officers and employees solely through the manager. Neither the council nor any member thereof shall give orders to the manager's subordinates or otherwise interfere with managerial functions through such means as directing or requesting the appointment or removal of any of the manager's subordinates, or the making of particular purchases from, or contracts with, any specific organization.

Kingston City Charter, § 5.03.

The duties and powers of Roane County Commissioners are set forth in the general law, Tenn. Code Ann. §§ 5-5-101, *et seq.* No statute makes the office of County Commissioner a full-time position.

In addition to constitutional and statutory provisions regarding dual office-holding, there is a common law prohibition against a public officer's holding two incompatible offices at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 89 S.W. 316 (1905). The question of incompatibility depends on the circumstances of each individual case, and 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 interferes with the performance of those of the other. 67 C.J.S.

Officers § 38 (2008). Tennessee courts have recognized that an inherent inconsistency exists where one office is subject to the supervision or control of the other. *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952). In *Thompson*, the Tennessee Supreme Court concluded that the offices of city manager and member of the city council were incompatible because the council had the authority to appoint, remove, and supervise the city manager, and no statute then in effect permitted the same individual to hold these offices. The Court found, therefore, that the common law principle of incompatible offices prohibited the same individual from acting as city manager and city council member.

Our Office has concluded in the past that it is unaware of any inherent inconsistency, incompatibility, or conflict between the offices of Red Bank City Commissioner and Hamilton County Commissioner that could prohibit the same person from holding them concurrently as a matter of common law. Op. Tenn. Att'y Gen. U86-77 (April 30, 1986). That opinion states, "[b]ut 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." An earlier opinion contains a similar conclusion with respect to an individual serving as an Alderman for the City of White Bluff and a Dickson County Commissioner. Op. Tenn. Att'y Gen. 84-209 (June 27, 1984). Based on our review, we think the same conclusion is appropriate with respect to the offices of Mayor of Kingston and Roane County Commissioner. Each of these officials is independently elected. Neither appoints, controls, nor supervises the other. No Tennessee case addresses the circumstances under which two independent offices might be incompatible under the common law either because occupancy of both offices by the same person is detrimental to the public interest, or because the performance of the duties of one interferes with the performance of those of the other.

Material included with the request cites cases from other states finding similar local offices to be incompatible under the common law. For example, the Supreme Court of New Jersey found that the offices of Mayor of the Town of Dover and member of the Board of Chosen Freeholders of Morris County were incompatible under the common law. *McDonough v. Roach*, 35 N.J. 153, 171 A.2d 307 (N.J. 1961). The Court referred to the second office as membership in "the governing body of the county." *Id.* at 308. The Court noted that statutes authorized the county and the city to contract with one another with respect to many subjects. The Court stated:

> In all of these matters the terms upon which the project is to be pursued are left to the agreement of the public bodies. In the negotiations the county board is bound to consider the interests of all of its citizens while the local governing body has a like obligation to the citizenry of the municipality alone. No man, much less a public fiduciary, can sit on both sides of a bargaining table. He cannot in one capacity pass with undivided loyalty upon proposals he advances in his other role.

Id. at 309. The Court also pointed out that, under state law, a county could take over a city road with the city's consent, and a city could take over a county road with the county's consent. The Court found that exercise of these powers by an individual holding office as city mayor and county legislator would involve the "same clash of obligations." *Id.*

Cases cited from other states are not binding in this jurisdiction. Further, the New Jersey Supreme Court addressed a different statutory scheme from that controlling in Tennessee. For example, as discussed above, the Mayor of Kingston exercises only limited administrative functions, and the city employs a full-time city manager. It is not clear whether the position of mayor addressed in *McDonough* exercised wider powers than those of the Mayor of Kingston. Material included with the request points out that many county commission decisions affect cities within the county, while many city council decisions affect the county in which the city is located. But only a Tennessee court can decide whether, because of this overlap, performance of the duties of one office interferes with performance of the duties of the other, or whether occupation of both offices by the same individual is detrimental to the public interest so that the offices are incompatible under the common law.

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