

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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August 9, 2013

Opinion No. 13-63

Algood City Administrator Serving as Algood City Police Chief

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**QUESTION**

May the same individual serve as the Algood City Administrator and the Algood City Police Chief?

**OPINION**

No.

**ANALYSIS**

The Code of Ordinances for the City of Algood establishes the position of city administrator and specifically states that this office is a full time position. Algood Code of Ordinances Title 1, Ch. 4, § 1-401, *available at* <http://www.algood-tn.com/page.asp?p=CityOrdinances> (“[t]he administrator shall give full time to the duties of his office”).<sup>1</sup> This ordinance precludes the Algood City Administrator from serving in any other position, including Algood City Police Chief.

In addition, Tennessee’s general conflict of interest statute would likely prevent the Algood City Administrator from serving as Algood City Police Chief. The general conflict of interest statute provides in relevant part:

It is unlawful for any *officer*, committee member, director, or other person whose duty it is to vote for, let out, *overlook, or in any manner to superintend* any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. “Directly interested” means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. “Controlling interest” includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. This subdivision (a)(1)

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<sup>1</sup> This opinion assumes that the Charter and Ordinances located at the City of Algood’s website are current and operative.

shall not be construed to prohibit any officer, committee person, director, or any other person, other than a member of a local governing body of a county or municipality, from voting on the budget, appropriation, resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested.

Tenn. Code Ann. § 12-4-101(a)(1) (emphasis added). Under this provision, the Algood City Administrator is prohibited from being directly interested in any contract he or she has a duty to vote for, let out, overlook, or superintend in any manner.

A review of the City of Algood's Charter and Ordinances reveals that the Algood City Administrator would "overlook" and "superintend" the Algood City Police Chief, thus precluding one person from occupying both of these positions under Tenn. Code Ann. § 12-4-101(a)(1).<sup>2</sup> Under the Algood City Code of Ordinances, the city administrator has the duty "to supervise and coordinate all administrative activities of each department under the city council." Algood Code of Ordinances, Title 1, ch. 4, § 1-402. The administrator also possesses the following additional duties:

(1) To make recommendations to the city council for improving the quality and quantity of public services to be rendered by the officers and employees to the inhabitants of the city.

....

(5) To act as personnel officer in matters of employment, dismissal, promotion or demotion of any employee, and to cause personnel files to be kept on all employees.

*Id.* Assuming the police chief is the head of a city department, this ordinance grants the city administrator some supervisory authority over the police chief, including supervising the police chief's employment contract with the city. This supervisory relationship would prevent the same person from holding the positions of city administrator and city police chief under Tenn. Code Ann. § 12-4-101(a)(1), given the administrator "overlooks" or in some manner "superintends" the work of the police chief.

Tennessee common law likewise prohibits a public officer from holding two incompatible offices at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 338-42, 89 S.W. 326, 327 (1905). See also Tenn. Att'y Gen. Op. 13-38 (May 7, 2013); Tenn. Att'y Gen. Op. 12-104 (Nov. 9, 2012); Tenn. Att'y Gen. Op. 85-036 (Feb. 14, 1985). This prohibition is generally applied when an individual occupies two inherently inconsistent offices. 63C Am.Jur.2d *Public Officers and Employees* § 58 (2012). The question of incompatibility depends

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<sup>2</sup> The Algood City Charter grants the Algood City Council the power to "[a]ppoint and remove" the city administrator as well as to "[e]stablish other administrative departments and distribute the work of divisions," which presumably would include the creation and appointment of the Algood City Police Chief. Algood City Charter, § 2.05(1) & (2), 1977 Tenn. Priv. Acts, ch. 69, § 1, located at <http://www.mtas.tennessee.edu>.

on the circumstances of each individual case, with the critical inquiries being 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 of those of the other. 67 C.J.S. *Officers* § 38 (2012). For example, 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, 401-02, 246 S.W.2d 59, 62 (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.<sup>3</sup>

In this case, the city administrator does not have the specific authority to appoint or remove the city police chief. But, based on the ordinances cited above, the city administrator does supervise all the city departments, including the police department. For this reason, the office of city administrator and the office of city police chief would be incompatible offices for the same person to occupy under this common law principle.

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<sup>3</sup> In the *Thompson* case, one of the offices found to be incompatible was popularly elected whereas neither the Algood City Administrator nor the Algood City Police Chief are popularly elected. But no authority suggests that the common law principle is confined to holders of elected office.