

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 24, 2014

Opinion No. 14-50

City's Interim Chief of Police Serving as Interim City Administrator

QUESTION

May a city's interim chief of police also serve as the interim city administrator?

OPINION

No law of general statewide applicability prohibits a person from serving simultaneously as a city's interim police chief and interim city administrator. However, the common-law prohibition against incompatibility of offices, local laws, or a city's charter may prohibit such a dual tenure.

ANALYSIS

Article II, § 26, of the Tennessee Constitution 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, 6 (1948); *Boswell v. Powell*, 163 Tenn. 445, 447, 43 S.W.2d 495 (1931). The offices of city administrator and chief of police are local offices and, therefore, are not covered by the prohibition of Article II, § 26. No other constitutional provision or state statute of general applicability would prohibit the same individual from serving in both positions simultaneously, whether full-time or on an interim basis.

However, holding such dual offices may be prohibited under common-law principles, by local laws, or by a city's charter. Under the common law, there is a well-recognized prohibition against a public officer 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 Tenn. Att'y Gen. Op. 13-63 (Aug. 9, 2013); Tenn. Att'y Gen. Op. 07-159 (Dec. 6, 2007); Tenn. Att'y Gen. Op. 07-145 (Oct.12, 2007). This prohibition is generally applied when an individual occupies two inherently inconsistent offices. 63C Am. Jur. 2d *Public Officers and Employees* § 58 (2014). The question of incompatibility depends 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 and Public Employees* § 38 (2002). 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). The responsibilities of each office must be reviewed to determine whether they are incompatible under the common law.

A local law or a city's charter may also prevent an individual from holding both offices simultaneously. *See Hatcher v. Chairman*, 341 S.W.3d 258, 263 (Tenn. Ct. App. 2009) (local law precludes members of city council from holding another public office); Tenn. Att'y Gen. Op. 01-152 (Sept. 25, 2001) (noting that city charter may prohibit an alderman from also serving as constable). Therefore, local laws or the city's charter must be consulted to determine whether such a prohibition applies to the offices of chief of police and city administrator, including service in those offices on an interim basis.

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