



County Technical Assistance Service

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Incompatible Offices

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Incompatible Offices

Reference Number: CTAS-633

Several state statutes prohibit a person from holding more than one county office. Pursuant to T.C.A. § 5-5-102(c)(2), no person elected or appointed to fill the office of county mayor, sheriff, trustee, register, county clerk, assessor of property, or any other county-wide office filled by vote of the people or the county legislative body, shall also be nominated for or elected to membership in the county legislative body.

No member of the county legislative body nor any other county official shall be eligible for election as a member of the county board of education. T.C.A. § 49-2-202(a)(2). This statute prevents one person from holding an elected county office and being a member of the school board. Op. Tenn. Atty. Gen. 01-144 (September 4, 2001). Note also that pursuant to T.C.A. § 5-5-102(c)(2) a director of schools cannot serve as a member of the county legislative body.

In addition to statutory provisions regarding dual office-holding, there is a well recognized common law prohibition against a public officer holding two incompatible offices at the same time. *State ex rel. Little v. Slagle*, 89 S.W. 316, 327 (Tenn. 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.

Op. Tenn. Atty. Gen. 08-129 (August 8, 2008) (county commissioner and city mayor). *See also* Op. Tenn. Atty. Gen. 08-177 (November 20, 2008) (constable and county commissioner); Op. Tenn. Atty. Gen. 08-107 (May 9, 2008) (county board of education member also serving as city council member and city board of education member); Op. Tenn. Atty. Gen. 07-159 (December 6, 2007) (deputy sheriff and county bus driver); Op. Tenn. Atty. Gen. 02-109 (October 2, 2002) (constable and judicial commissioner); Op. Tenn. Atty. Gen. 02-012 (January 18, 2002) (offices of sheriff and constable incompatible under the common law); Op. Tenn. Atty. Gen. 00-050 (March 20, 2000) (constable serving as a full-time or part-time deputy sheriff); Op. Tenn. Atty. Gen. 99-160 (August 19, 1999) (constable serving as deputy sheriff); Op. Tenn. Atty. Gen. U86-77 (April 30, 1986) (city commissioner and county commissioner); Op. Tenn. Atty. Gen. 84-209 (June 27, 1984) (county commissioner and city alderman).

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