

**Officers, Holding Two Offices at One Time.**

Section 7, of Article V, of the Constitution, designates certain offices who are prohibited from holding certain other offices at the same time. In the absence of an express provision in the Constitution or statutes prohibiting a person from holding two offices at the same time they may do so, provided that the duties to be performed by the incumbent of such offices are not inconsistent or incompatible.

April 1, 1905.

H. L. Wilson, Esq., County Attorney, Billings, Montana:

Dear Sir:—Your request of March 28, for an opinion of this office as to whether a person holding the office of clerk of the court may legally

hold office of mayor of a city or town at the same time, to hand.

The only limitation as to the right of holding two offices at the same time appears in Section 7 of Article V of the Constitution, which provides that "No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office."

The above is the only express provision in the constitution or statutes of our state which in any way prohibits a person from holding two offices at the same time.

Where there is no express provision against one person holding two offices at the same time, the rule of law has been laid down by Throop on Public Officers as follows:

"Sec. 30. At common law, there is no limit to the number of offices which may be held simultaneously by the same person, provided that neither of them is incompatible with another."

"Sec. 31. In many of the states of the Union it is expressly forbidden by the constitution or by statute that one person should hold two public offices under the state government and that an officer under the state government should hold office under the United States government. But wherever no such prohibition exists or in cases to which it does not apply, the courts within the United States uniformly recognize and apply the common law rule." (See also Mechem on Public Offices, Sec. 422.)

There being no express provision in our statutes or constitution forbidding a person who is holding the office of clerk of the court from also holding the office of mayor of a city or town within the state, such person could undoubtedly hold both offices, unless the duties to be performed by the incumbent of such offices are inconsistent and incompatible. Therefore, unless there is some conflict or incompatibility in the duties devolving upon the occupant of these respective offices, by virtue of the laws of the state or of the ordinances of the city of Billings, they may be held by the same person at the same time.

Yours very truly,

ALBERT J. GALEN,

Attorney General.