

**Sheriff as School Trustee. School Trustee as Sheriff.
Offices not Incompatible.**

There is no incompatibility between the duties in the office of sheriff and that of school trustee, and as the law does not expressly prohibit the same person from holding these two offices, both offices may be held by the same person.

Helena, Mont., Dec. 20th, 1906.

Hon. W. E. Harmon,
Superintendent Public Instruction,
Helena, Mont.

Dear Sir:—

I am in receipt of your favor of the 14th inst., requesting an opinion of this office upon the following question:

“Can a person hold the office of sheriff and also that of school trustee at the same time?”

There is but one limitation to the holding of two offices at the same time by one person. That limitation is found in Section 7 of Article 5 of the Constitution of this State, which reads as follows:

“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, shall be a member of either house during his continuance in office.”

It will be seen, therefore, that the only limitation placed by our constitution upon the right to hold more than one office at the same time is directed against those holding the office of Senator or Representative.

The common law rule is that there is no limit to the number of offices which may be held by the same person at the same time; provided, that neither of them is incompatible with another. Where there is no prohibition against the simultaneous holding of different offices, the courts within the United States have uniformly recognized and applied the common law rule. Such being the case, a sheriff can, undoubtedly, hold the office of school trustee as well as that of sheriff, there being no conflict in the duties devolving upon the occupant of the two offices.

To the same effect, see also official opinion of this office rendered to H. L. Wilson, Esq., County Attorney, Billings, Montana, April 1, 1905, found on page 67 of the report and opinions of Attorney General for the years 1905-6.

Yours very truly,

ALBERT J. GALEN,
Attorney General.