

Public Offices, Two May Be Held by One Person.

Where the two offices are not inconsistent or incompatible, in the absence of any prohibition in the constitution or statutes, they may be held by one person.

February 11th, 1913.

Hon. T. F. Shea,
County Attorney,
Deer Lodge, Montana.

Dear Sir:

I am in receipt of your favor of the 7th inst., requesting an opinion upon the question of whether or not the offices of public administrator and justice of the peace of the same county may be held by the same person. I am also in receipt of your brief upon said question and note carefully your conclusions, and the decisions and references cited by you in support thereof. In my opinion you have arrived at the right conclusion; that is, that there are no provisions of our constitution or statutes that would prevent these two offices being held by the same person.

See Opinions of Attorney General, 1905-6, p. 67.

Opinions of Attorney General, 1906-08, pp. 12 and 13.

Opinions of Attorney General, 1910-12, p. 32.

In my opinion Sec. 2 of Art. IV. of the State Constitution does not prohibit these two offices being held by the same person.

State v. Jackson, 9 Mont. 519.

Marshall v. Nelson, 49 Ala. 88, says of the duties of a public administrator:

"Under our law an administrator is a trustee whose duty it is to be employed wholly about private rights. * * * None of these things are the public functions of a public office; but they are duties of an administrator whether he be an ordinary administrator of the estate of a single individual or the general administrator of the county."

See also Dwinelle v. Henriquez, 1 Cal. 388 at 392.

Under the authority of these decisions it would seem that the duties of the public administrator are neither legislative, executive or judicial so as to be incompatible with the duties of a justice of the peace.

Under the decision of People v. Provines, 34 Cal. 520, the rule seems to be quite decisively laid down that an office of the character of public administrator is not such an office as is contemplated by Sec. 2 of Art. IV. of the Constitution, and therefore is not within the prohibition of that article.

Not coming within the prohibition of said Art. IV. in my opinion the two offices are not inconsistent or incompatible, and in the absence of any express provision in the constitution or statutes prohibiting a person holding both at the same time, you are advised that they may both be held by the same person at the same time.

Very truly yours,

D. M. KELLY,
Attorney General.