

**Justices of the Peace—Police Judges—Salary—Offices.**

A justice of the peace may not draw the salary of a justice of the peace and the salary of police judge at the same time but may hold both offices where the justice is not paid a salary.

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Billings, Montana.

April 4, 1925.

My dear Mr. Mann:

You have requested an opinion whether a justice of the peace may draw a salary from the county as a justice and at the same time draw a salary from the city as police judge.

Section 4929, R. C. M. 1921, provides in part as follows:

“Justices of the peace in townships having a population of ten thousand people and not exceeding twenty thousand people shall each receive a salary of fifteen hundred dollars per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than twenty thousand people shall each receive a salary of twenty-four hundred dollars, payable monthly from the county treasury; and justices of the peace in such townships shall receive *no other additional fees or compensation whatever*, except that they may receive and keep those fees designated as ‘miscellaneous fees’ by section 4927 of this code.” (Italics ours.)

Section 5020 provides in part that the annual salary and compensation of police judges must be fixed by ordinance, and in a city of the first class with a population in excess of 50,000 inhabitants, must not exceed, for all services rendered, \$3,000; and in a city of the second

class must not exceed \$1,500; and in a city of the third class must not exceed \$600; and, in addition, a police judge is entitled to receive *in all civil* cases the fees which are now or may hereafter be allowed justices of the peace.

Thus, it appears that in the cases of justices of the peace in counties of ten thousand population or over the justice is paid a salary and all fees in civil cases belonging to the county, while in the case of a police judge in cities of the first, second and third class, the judge is not only paid a salary but is allowed fees in civil cases. Hence it is plain that it was intended that these should be separate and distinct offices and that the justice or judge should devote his time to the duties of the office and it would be contrary to public policy for one man to hold both positions and draw both salaries as the duties of one office must wait while he is attending to the duties of the other and he could not be earning both salaries at one and the same time.

This condition does not exist, however, where the justice is not paid a salary but is only allowed fees for services performed and in that case he may serve both as justice of the peace and police judge, as provided in section 5021, which reads as follows:

"In towns, the council may designate a justice of the peace of the township in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, not exceeding one hundred dollars per annum, and the justices of the peace so designated must act as a police judge in all cases arising out of a violation of ordinances where the town is a party."

It is, therefore, my opinion that a justice of the peace cannot draw a salary as justice and a salary as police judge at the same time, but may hold both offices where the justice is not paid a salary but simply allowed fees for services performed.

Very truly yours,

L. A. FOOT,  
Attorney General.