

Offices—Incompatibility—Public Officers—County Commissioners—Councilmen.

The offices of county commissioner and councilman held to be incompatible so that one person may not hold both at the same time.

Mr. Dean King,
County Attorney,
Kalispell, Montana.

April 15, 1931.

My dear Mr. King:

You inquire whether a person may hold the office of county commissioner and that of town councilman at the same time. I wired you Saturday that in my opinion the offices are incompatible.

Without endeavoring to enumerate all the instances where incompatibility exists, a few will be stated which, in my opinion show the two offices to be incompatible to such an extent that they cannot be held by the same person.

The board of county commissioners has general supervision over the county officers under and by virtue of section 4465, R.C.M. 1921 and amendments thereto. Certain of the county officers such as the county treasurer and county clerk and recorder may, or do, perform certain services for the city, such as the collection of taxes, furnishing of election supplies, etc. It would seem to be against the general policy of the state to permit councilmen to sit upon the board of county commissioners and have supervision over these officers who perform certain services for the city or town when such services are not rendered in the capacity of an employee or officer of the city or town but in their capacity as county officers.

There are, and may be, occasions when lawsuits may arise between cities and towns on one hand and the county on the other, in which event the board of county commissioners has the direction of the conduct of the action on behalf of the county. It will be readily seen if this board was composed of the councilmen of the city the interests of the county would not be free of possible influence by reason of the councilmen being on the board of county commissioners.

The last session of the legislature passed an act permitting counties to expend county funds for the purpose of maintaining, repairing and operating airports belonging to cities and towns. This is in the discretion of the county commissioners but it can easily be seen that if that board was composed of members of town or city councils the determination of the board as to whether such financial aid should be given might be influenced by the fact that its members were interested in the airport by reason of their official connection with the town or city owning it.

For these and other instances not necessary to be herein set forth, it is my opinion that one person may not hold the office of county commissioner and city or town councilman at the same time.

Very truly yours,

L. A. FOOT,

Attorney General.