

No. 378

**JUSTICES OF THE PEACE—POLICE OFFICERS—
OFFICERS AND OFFICES, compatibility of**

Held: A town police officer may not also serve as justice of the peace in the township which embraces the area of the said town since the two offices are inconsistent and incompatible.

March 21, 1942.

Mr. Fred W. Schmitz
County Attorney
Broadwater County
Townsend, Montana

Dear Mr. Schmitz:

You have asked this office for an opinion upon the question of whether a police officer of the Town of Townsend may also be a justice of the peace of Townsend Township in Broadwater County, which township comprises the Town of Townsend as well as other and adjoining territory of the county. Since there does not seem to be any constitutional or statutory provision prohibiting a police officer from holding the office of justice of the peace, the question, then, is whether the positions are incompatible.

It has been held by this office a county sheriff may not also serve as chief of police of an incorporated city within his county. (Vol. 15, Opinions of the Attorney General, p. 96). In that opinion the case of *State v. Brobst*, 218 N. W. 253 (Iowa), was quoted, in part, as follows:

"Gathering its ideas from the early forms of government in America, this state adopted the township and city systems as separate and distinct jurisdictions for the administration of justice and the preservation of peace."

As pointed out by you, a police officer's duty under the town appointment might well be incompatible with the duties of justice of the peace under the township (or county) election or appointment. As police officer he may arrest a person for violation of law and then be expected to sit as justice of the peace in the trial of the person or as examining magistrate at a preliminary hearing. True, a justice of the peace could possibly avoid sitting in a case wherein he had arrested the accused, but the very fact such a situation might arise often makes the offices appear to be inconsistent.

The Montana Supreme Court in the case of *State ex rel. Klick v. Wittmer*, 50 Mont. 22, 24, 144 Pac. 648, said:

"Offices are 'incompatible' when one has power of removal over the other (citing cases), when one is in any way subordinate to the other (citing cases),—or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both. . . ."

As indicated, it seems clear that, because of the duties of the respective offices involved, the holding of these two offices, town police officers and justice of the peace, is contrary to public policy.

It is therefore my opinion a town police officer may not also serve as justice of the peace in the township which embraces the area of the said town since the two offices are inconsistent and incompatible.

Sincerely yours,

JOHN W. BONNER
Attorney General