

No. 75

**COUNTY COMMISSIONERS—LIQUOR VENDORS—  
INCOMPATIBILITY OF OFFICES—OFFICES  
AND OFFICERS**

**Held:** County Commissioner appointed as liquor vendor may hold both the office of County Commissioner and the position of liquor vendor, where County Commissioner performs his duties fully and faithfully as such County Commissioner.

April 8, 1941

Mr. James H. Higgins  
County Attorney  
Meagher County  
White Sulphur Springs, Montana

Dear Mr. Higgins:

You have submitted the following question:

“Where a County Commissioner has been appointed liquor vendor

(under the Montana Liquor Control Board) may he lawfully continue to hold both positions?"

We find no constitutional or statutory prohibition against a person holding an office, such as a county commissioner, and at the same time holding an employment such as a liquor vendor, appointed by the Montana Liquor Control Board.

The liquor vendor is not a civil officer under the State. He is only an employee of the Montana Liquor Control Board.

"In our opinion, he is only an employee; holding a position of employment, terminable at the pleasure of the employing power, the Board of Railroad Commissioners."

State ex rel. Barney v. Hawkins, et al., 79 Mont. 506, 257 Pac. 411.

The liquor vendor has no term or tenure of office, discharges no duties and exercises no powers depending directly upon authority of law. He performs no independent actions but is controlled by the Board, which may direct his every action, and his responsibility is solely to the Board, as its employee.

The only question which arises under this situation is a question of public policy; and, where a County Commissioner as such performs his duties fully and faithfully to the county as one of its principal officers, the only objection which might arise would be with the employer, the Montana Liquor Control Board. With that phase of the question we are not concerned.

I am therefore of the opinion there is no legal conflict arising between the office of county commissioner and the position of liquor vendor, and the two positions are not incompatible where a county commissioner performs his duties as county commissioner fully and faithfully.

Sincerely yours,

JOHN W. BONNER,  
Attorney General