

Dear Mr. Kahlberg:

Your office has submitted the following question to me:

"Are the Offices of City Treasurer and City Clerk incompatible?"

Although this precise question has never before been presented to this office, the test for determining compatibility has been announced many times by this office and by our Supreme Court.

In State v. Wittmer, 50 Mont. 22, 144 Pac. 647, our court stated:

"Offices are incompatible when one has the power of removal over the other . . . when one is in any way subordinate to the other . . . 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."

Acting under authority of this decision, the following offices have been held incompatible: Justice of the Peace and Public Administrator; (23 Opinions of the Attorney General 212, No. 137), Justice of the Peace and Town Police Officer; (19 Opinions of the Attorney General 642, No. 378), County Clerk and County Commissioner; (20 Opinions of the Attorney General 336, No. 263), County Treasurer and Clerk of the School District; (15 Opinions of the Attorney General 282, No. 403), Sheriff and Chief of Police; (15 Opinions of the Attorney General 96, No. 127), County Commissioner and School Trustee; (15 Opinions of the Attorney General 48, No. 61), District Judge and School Trustee; (8 Opinions of the Attorney General, page 224), School Trustee and County Commissioner; (8 Opinions of the Attorney General, page 402), City Alderman and City Health Officer; (9 Opinions of the Attorney General, page 210), County Attorney and City Attorney; (10 Opinions of the Attorney General, page 330), Members of the Legislature and County Attorney; (7 Opinions of the Attorney General, page 354).

June 2, 1953.

Mr. A. J. Kahlberg
Deputy State Examiner
Helena, Montana

For further examples, see L. R. A. 1917-A, 211, McQuillan, Municipal Corporations, 3rd Ed., Vol. 3, Section 12.67 p. 261.

Since there is no specific authority on the question of whether or not the offices of City Treasurer and City Clerk are incompatible, it is necessary to look at the powers and duties of the two offices.

Section 11-805, R. C. M., 1947, enumerates the general duties of the city clerk and Section 11-807, R. C. M., 1947, the general duties of the city treasurer. A study of these sections reveals that the two offices constitute a check on each other. In certain instances, the city treasurer is commanded to give a receipt to the city clerk for various charges. The clerk must keep a finance book which contains all the warrants drawn upon the City Treasury and he must make copies of the payment of all fees which he is allowed to charge, and these fees must be paid to the city treasurer. The city clerk must certify the results of the election for the office of city treasurer to the county clerk and, also, prepare a complete statement of the financial condition of the city or town to the State Examiner.

It is, therefore, my opinion that the offices of the city treasurer and city clerk are incompatible and that one person cannot hold both offices, since the duties of the offices necessarily conflict, in that one office has the power and duties of supervising and checking on the powers and duties of the other office.

It is further my opinion that it is contrary to public policy to allow one person to retain both the office of city treasurer and city clerk.