



STATE OF MISSOURI
MISSOURI ETHICS COMMISSION
P.O. BOX 1254
JEFFERSON CITY, MISSOURI 65102

OPINION NO.

1996.04.125

573/751-2020
1-800/392-8660

May 13, 1996

COPY

At the April 30, 1996 meeting of the Missouri Ethics Commission, your request for an opinion was considered. The following is in response to your questions: *Can a county commissioner also serve on a nursing home board?*

From the facts presented in your letter, the Commission stated there appears to be no violation of the conflict of interest statutes contained in Chapter 105 RSMo. However, you may wish to consider whether the dual service would violate the common law conflict of interest. For your assistance, I have enclosed copies of Attorney General Opinions numbered 42-90 and 121-88. The Commission further stated that you should be aware that a conflict of interest may arise if the county official, acting in his official capacity, takes action that affects the nursing home district, such as if he enters into contracts between the county and the nursing home district.

Can an employee of the Missouri Highway Department also serve on a nursing home board?

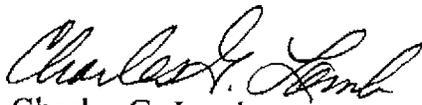
The Commission is of the opinion that there is no conflict of interest with an employee of the Missouri State Highway Department being on the nursing home board. The Commission recommends the Highway Department employee contact his employer to determine if the Highway Department has regulations precluding service on such boards.

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If you have any further questions, please feel free to contact this office.

Sincerely,



Charles G. Lamb
(Acting) Administrative Secretary

CGL:bd
Enclosures

NOTICE

Anyone examining this advisory opinion should be careful to note that an opinion of the Missouri Ethics Commission deals only with the specific request to which the opinion responded and only as to the law as it existed at the date of the response and cannot be relied upon for any other purpose or in any other manner.

96.04.125

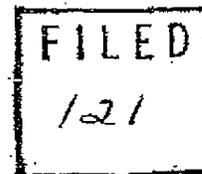
CITIES, TOWNS AND VILLAGES:
CITY OFFICERS-OFFICIALS:
CONFLICT OF INTEREST:
COUNTIES:
COUNTY COMMISSIONS:
COUNTY COMMISSIONERS:
INCOMPATIBILITY OF OFFICES:

The same person may not simultaneously hold both the office of presiding commissioner of a third class county and the office of alderman of a fourth class city within that county.

June 7, 1988

OPINION NO. 121-88

The Honorable Norman L. Merrell
Senator, District 18
State Capitol Building, Room 423
Jefferson City, Missouri 65101



Dear Senator Merrell:

This opinion is in response to your question asking:

May the Presiding Commissioner of Scotland County simultaneously hold the position of an elected alderman of Memphis, Missouri?

It is our understanding Scotland County is a third class county and Memphis, the county seat, is a fourth class city.

We have found no statute or constitutional provision prohibiting the same person from holding these offices simultaneously. However, we have also examined the common law doctrine prohibiting a public officer from holding two incompatible offices. The principles of that doctrine have been set forth by Missouri courts as follows:

At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two, -- some conflict in the duties required of the officers, as where one has some supervision of the others, is required to deal with, control, or assist him. It was said by Judge Folger (People v. Green, 58 N.Y. 295):
"Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that 'incompatibility' from which the law declares that