

Appendix C. Positions that Can and Cannot Be Held at the Same Time

Tennessee Constitution Article II, § 26

No Judge of any Court of law or equity, Secretary of State, Attorney General, Register, Clerk of any court of Record, or person holding any office under the authority of the United States, shall have a seat in the General Assembly; nor shall any person in this State hold more than one lucrative office at the same time; provided, that no appointment in the Militia, or to the office of Justice of the Peace, shall be considered a lucrative office, or operative as a disqualification to a seat in either House of the General Assembly.

Positions that Can be Held at the Same Time

A county court judge can serve as an uncompensated criminal court judge because the criminal court judge position is not a lucrative office. *Hodge v. State*, 135 Tenn. 525, 188 S.W. 203, 1916 Tenn. LEXIS 45 (1916).

Pike commissioner employed temporarily and for a single purpose is not an office within the constitutional or statutory meaning of the term, and a member of the county court can hold that position and still vote for the road improvement bond the pike commissioner were appointed by the court to sell. *Whitehead v. Clark*, 146 Tenn. 660, 244 S.W. 479, 1922 Tenn. LEXIS 14 (1922).

A state senator can serve in the office of school director because the school director position is not a lucrative office. *Wallace v. Grubb*, 154 Tenn. 655, 289 S.W. 530, 1926 Tenn. LEXIS 164 (1926).

A person can serve in a lucrative office and serve as a back tax collector because tax collector is not an office. *State ex rel. Harris v. Brown*, 157 Tenn. 39, 6 S.W.2d 560, 1927 Tenn. LEXIS 46 (1928).

A county court clerk can serve as ex officio general sessions court clerk because a statute conferring additional duties on a public officer ex officio does not have the effect of appointing him to a second office. *Hancock v. Davidson County*, 171 Tenn. 420, 104 S.W.2d 824, 1937 Tenn. LEXIS 122 (1937).

A county judge or chair can serve an ex officio member of a county highway commission because the ex officio position does not confer on the judge a second office of trust or profit. *Cheatham County v. Murff*, 176 Tenn. 93, 138 S.W.2d 430, 1939 Tenn. LEXIS 104 (Tenn. 1940).

A county superintendent of schools can serve as a state senator because the county superintendent position is not a lucrative office. *Phillips v. West*, 187 Tenn. 57, 213 S.W.2d 3, 1948 Tenn. LEXIS 410 (1948).

A circuit court clerk serve as ex officio general sessions court clerk because a statute conferring additional duties on a public officer ex officio does not have the effect of appointing him to a

second office. *Clay County v. Stone*, 208 Tenn. 1, 343 S.W.2d 863, 1961 Tenn. LEXIS 388 (1961).

A constable can serve as a part-time town policeman because these are not lucrative offices. Office of Attorney General Opinion No. 99-095 (4/26/99).

A deputy sheriff can serve as interpreter in a criminal prosecution because an interpreter is not a lucrative office. Office of Attorney General Opinion No. 99-211 (10/20/99).

A municipal official can serve on the State Election Commission because the municipal position is not a lucrative office but Tennessee Code Annotated Section 2-1-112(a) prohibits a candidate for election or re-election to any state or local office from serving as a member of the State Election Commission. Office of Attorney General Opinion No. 02-117 (10/22/02).

A city court judge can serve as a juvenile court referee because both are local offices. Article II, Section 26, of the Tennessee Constitution does not bar the same individual from holding two local offices. Office of Attorney General Opinion No. 06-123 (8/1/06).

A state legislator can serve as a dispute resolution neutral because a dispute resolution neutral is not a lucrative office. Office of Attorney General Opinion No. 11-58 (7/18/11).

An elected county official can serve on a county soil conservation district because the elected county office is not a lucrative office. Office of Attorney General Opinion No. 13-18 (3/6/13).

A county commissioner may serve as clerk and master because these are not lucrative offices. Office of Attorney General Opinion No. 14-23 (2/26/14).

Positions That Cannot Be Held at the Same Time

Elected constable and general deputy sheriff are both lucrative offices and cannot be held at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 89 S.W. 326, 1905 Tenn. LEXIS 67 (1905).

One cannot hold the offices of attorney general and United States senator at the same time because they are both lucrative offices. *Kelly v. Woodlee*, 175 Tenn. 181, 133 S.W.2d 473, 1939 Tenn. LEXIS 28 (1939).

Constitutional convention delegate and general assembly member are both lucrative offices and cannot be held at the same time. Office of Attorney General Opinion No. 98-054 (3/3/98).

A county medical examiner in whom the county commission has vested the duties of county coroner is prohibited by Tenn. Code Ann. § 5-5-102(c) (2) from serving as a county commissioner. Office of Attorney General Opinion No. 11-74 (10/17/11).

A county commissioner can serve on a road board and because the office of county commissioner is not a lucrative office. Office of Attorney General Opinion No. 00-159

(10/17/00).

The constitutional prohibition against a person holding more than one state office at the same time does not apply to prevent an alderman from also having a county constable seat, as those offices are both local offices. Office of Attorney General Opinion No. 01-152 (9/25/01).

An individual may serve and be compensated as both a juvenile court referee and as appointed counsel in criminal cases. Office of Attorney General Opinion No. 01-162 (11/5/01).

An elected state official cannot serve on a county soil conservation district because these are both lucrative offices. Office of Attorney General Opinion No. 13-18 (3/6/13).

A city's interim chief of police may not be able to serve as interim city administrator because of the common-law prohibition against incompatibility of offices. Office of Attorney General Opinion No. 14-50 (4/24/14).

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