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PUBLIC OFFICES AND OFFICERS: Compatibility of offices of coroner and township trustee.

No conflict of interest exists between the offices of coroner and township trustee which would render the same incompatible.

No. 4548

September 27, 1966.

Honorable Stanley M. Powell
State Representative
R.F.D. No. 1, Box 238
Ionia, Michigan 48846

You have requested my opinion as to the compatibility of the offices of coroner and township trustee.

The trustee is an elective township officer whose sole statutory function is to serve as one of the members of the township board.¹

The coroner is an elective county officer.² His principal duty relates to the investigation of the cause of death of persons who die without medical attention or as a result of violence³ and the holding of inquests thereon.⁴ Provision is also made for the coroner, under certain circumstances, to be designated and to act as the sheriff or under-sheriff of the county.⁵

There is no express statutory prohibition in either the constitution or the statutes of this state against the simultaneous holding of the two offices. The common law rule as to incompatibility of offices is stated:⁶

"At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. A public officer is, however, prohibited from holding two incompatible offices at the same time, the rule being founded on principles of public policy; and, even though specific constitutional and statutory provisions furnish no bar to the holding of particular offices or positions at the same time, the common law must be considered in determining whether there is any incompatibility therein unless the legislature has, by clear and unequivocal language, manifested its intention to abrogate the common-law principle to the extent of permitting one to hold incompatible offices. * * * The question of incompatibility of necessity depends on the circumstances of the individual case. Although there is authority holding that offices are incompatible when it is physically impossible that they may be

¹ C.L.S. 1961 § 41.70; M.S.A. 1961 Rev. Vol. § 5.62.

² Sec. 86, Chapter 14, Rev. Statutes of 1846, C.L. 1948 § 52.86; M.S.A. 1961 Rev. Vol. § 5.951.

³ C.L. 1948 § 326.8; M.S.A. 1956 Rev. Vol. § 14.228; C.L. 1948 § 773.19; M.S.A. 1954 Rev. Vol. § 28.1187; O.A.G. 1945-46, No. 0-3061, p. 188.

⁴ C.L. 1948 § 773.12; M.S.A. 1954 Rev. Vol. § 28.1180.

⁵ C.L. 1948 § 52.87; M.S.A. 1961 Rev. Vol. § 5.952.

⁶ 67 C.J.S., Officers, § 23, pp. 133-36.

performed properly by the same person, the general rule is that the inconsistency, which at common law makes offices incompatible, does not consist in the physical impossibility to discharge the duties of both offices, but lies rather in a conflict of interest, as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or the power to remove the incumbent of the other, or to audit the accounts of the other, the question being whether the occupancy of both offices by the same person is detrimental to the public interest or whether the performance of the duties of one interferes with the performance of those of the other. Thus, in determining incompatibility, the permanency of the position, the power granted, and the functions actually performed should be considered. * * *"

As above noted, the trustee is a township officer while the coroner is a county officer. Neither has any degree of supervisory power or control over the other. Nor, do any of the powers or duties of the two offices relate to the functions, responsibilities, or duties of the other which would cause a conflict of interest between the two. It follows that the two offices are not incompatible. Accordingly, the same may be held simultaneously by the same individual.

FRANK J. KELLEY,
Attorney General.

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HOME RULE CITIES – INCORPORATION – TOWNSHIPS

Necessary expenses of a charter commission drafting a charter for a new home rule city being incorporated out of all of a township are to be paid by the first legislative body of the newly incorporated city and the township has no authority to pay such expenses.

No. 4547

October 3, 1966.

Honorable Bruce L. Monks
State Representative
23620 Southland Court
Mt. Clemens, Michigan 48043

You state that the charter commission of the City of Sterling Heights has asked for a formal opinion concerning Section 17¹ of Act 279 of the Public Acts of 1909, as amended, usually referred to as the Home Rule Act, with reference to the payment of necessary expenses incurred while drafting a city charter for a home rule city being incorporated out of all a township.

One of my predecessors rendered an opinion on July 18, 1956² concern-

¹ CLS 1961 § 117.17; MSA 1965 Cum Supp § 5.2096.

² Biennial Report of the Attorney General, Michigan, 1955-1956, Vol. II, p 410, No. 2632.