



STATE OF WEST VIRGINIA
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Honorable Ken Hechler
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Mr. Hechler:

You have requested an opinion on whether a person may hold the office of Mayor of a municipality and also serve as a member of the County Commission.

The first question that must be resolved is whether one person's holding of these offices would violate the separation of powers mandated by the West Virginia Constitution.

Specifically, Article V, Section 1 of the West Virginia Constitution states:

Section 1. The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature.

W. Va. Const. Article V, Section 1, Division of Powers.

In Hubby v. Carpenter, ___ W. Va. ___, 350 S.E.2d 706 (1986) the West Virginia Supreme Court of Appeals held that the doctrine of separation of powers was not applicable to a municipality, so as to prohibit misdemeanor trials in mayor's court. The Court approved of the Mayor's performance of executive, legislative and judicial roles, finding that a co-mingling of duties by the Mayor was permissible and not violative of the doctrine of the separation of powers, because "at the lower levels of government there must necessarily be an overlapping of functions in responsible individuals, lest the cost of government be too burdensome to bear." Hubby, 350 S.E.2d at 710.

The Hubby decision, however, is distinguishable from the question presented here. In Hubby, the Court did not address the propriety of a mayor, the executive officer of a municipality, also serving as a county commissioner. A mayor's exercise of multiple roles is distinctly different from a mayor's acceptance of an additional public office. Assuming, arguendo, that holding the office of mayor and being a county commissioner would not offend the constitutional mandate of the separation of the three branches of government, an examination of the compatibility of the two offices must be made.

Public policy demands that an officer exercise his best efforts, free from any taint of bias in the discharge of his duties as a public officer. Therefore, "a public officer cannot hold two incompatible offices at the same time." 63A Am.Jur.2d, Public Officers and Employees, Section 64.

Both a county commissioner and a mayor are public officials. Therefore, the question becomes whether a person holding both offices at the same time is presented with a conflict making the holding of both offices incompatible. Offices are incompatible "if the responsibilities of one office can in any manner influence the actions of the public officer in the discharge of the duties of his second office". 55 Op. Att'y Gen. 78 (March 28, 1973).

An overview of the West Virginia Code shows that such an incompatibility exists between the office of mayor and that of county commissioner. W. Va. Code Section 7-1-3a allows a county commission to contract with a municipality. W. Va. Code, Section 7-1-3d allows a county commission to enact levies to establish the operation of fire prevention units, with income received from such levies being given to towns or cities. Additionally, a county commission may finance the acquisition of a water works system by a municipality. 61 Op. Att'y Gen. 16 (April 1, 1985). Moreover, per W. Va. Code Section 7-1-3t a county commission may make grants from general county revenue to municipalities.

Finally, as we stated in our opinion of March 28, 1973:

A municipality's bonded indebtedness is limited to a percentage of the assessed valuation of the property within the municipality. West Virginia Code 13-1-3. And the county court, sitting as a board of review and equalization, has the power to determine the assessed valuation of all property within the county. It is not inconceivable that pressures on a city manager to raise additional municipal funds through bonded indebtedness


might exert some influence on a county commissioner to vote to raise the assessed valuation of property located within the municipality, if in fact the two public offices were occupied by the same individual.

The reasoning of the foregoing opinion would be applicable whether the city manager or the mayor has been designated as the chief executive officer of a municipality pursuant to W. Va. Code Section 8-1-2(b)(3).

Therefore, for the foregoing reasons as well as the reasons stated in the opinion of the Attorney General dated January 29, 1938 (37 Op. Att'y Gen. 319), it is again the official opinion of this office that the offices of Mayor and of County Commissioner are incompatible.

Sincerely,

ROGER W. TOMPKINS
ATTORNEY GENERAL


KATHERINE A. SCHULTZ
SENIOR ASSISTANT ATTORNEY GENERAL

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