

Opinion No. 18-2078

January 22, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Mr. Jas. A. French, State Highway Engineer, Santa Fe, New Mexico.

Offices of County Surveyor and County Highway Superintendents Are Incompatible.

OPINION

We have your favor of the 18th, wherein you ask whether or not the same person may hold the offices of County Surveyor and County Highway Superintendent at the same time.

Our statute relative to holding more than one office at the same time is that, when an officer accepts or undertakes to discharge the duties of another office, the first office becomes vacant if the two offices are incompatible. This is in effect but an enactment of the common law rule upon this subject. Under the common law the holding of one office did not of itself disqualify an incumbent from holding another office, at the same time, provided there was no inconsistency in the functions of the two offices.

This being the general rule it becomes necessary to determine whether or not the two offices mentioned are inconsistent. With this in mind we find that, Section 1297 of the 1915 Codification, provides:

"All county surveying, engineering on roads and bridges, shall be performed by the county surveyor, etc."

Chapter 38 of the Laws of 1917, creates the office of County Highway Superintendent, and, is in part, as follows:

"Subject to the control of the County Commissioners, and the limitations of the Act, the County Highway Superintendent shall supervise and direct the construction, maintenance and repair work upon all roads, highways and bridges within the county or counties wherein he is employed and the expenditure of county road and bridge funds."

From the two quotations it is seen that among the duties of the County Surveyor is the duty to do all surveying on county roads, and that the County Highway Superintendent is required to supervise and direct the construction and maintenance of all county roads and bridges. Necessarily, it seems to us, the surveying of a road is a part of its construction. This being true the County Surveyor while engaged in surveying a road would, by virtue of the Act of 1917, be under the supervision and direction of the County Highway Superintendent. Therefore, the relations of the two officers would be inconsistent in this regard.

But is this such an inconsistency as will render the two offices incompatible within the meaning of the statute first mentioned? We think it is. The duty to supervise work has always been held incompatible with the duty to perform the work. The reason for such holding is obvious. If a man can do the work and at the same time direct and supervise it, what benefit is obtained by such supervision? It has been well said that a "visitor cannot visit himself," neither can a man supervise or direct himself.

This conclusion is supported by the authorities as is shown by the following quotation from the case of *State v. Wittmer*, 144 Pac. 648, by the Supreme Court of Montana:

"Offices are 'incompatible' when one has power of removal over the other (29 Cyc. 1382; *Attorney General v. Council*, 112 Mich. 145, 70 N. W. 450, 37 L. R. A. 211), when one is in any way subordinate to the other (*State v. Jones*, 130 Wis. 572, 110 N. W. 431, 8 L. R. A. N. S. 1107, 118 Am. St. Rep. 1042, 10 Ann, Cas, 696), when one has power of supervision over the other (*State v. Taylor*, 12 Ohio, St. 130; *Cotton v. Phillips*, 56 N.H. 220; *State v. Hilton*, 80 N.J. Law 528, 78 Atl. 15) 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 (*Mechem of Public Officers*, Sec. 422; *State v. Anderson*, 155 Iowa 271, 136 N. W. 128; *State v. Thompson*, 122 N.C. 493; 29 S. E. 720; *State v. Goff*, 15 R. I. 505, 9 Atl. 226, 2 Am. St. Rep, 921; *Magie v. Stoddard*, 25 Conn. 565; 68 Am. Dec. 275; *People v. Commissioners*, 76 Hun, 146, 27 N.Y.S. 548; *State v. Buttz*, 9 S. C. 156)."

For the reasons given herein we are of the opinion the offices of County Surveyor and County Highway Superintendent are incompatible, and, therefore, the same person cannot hold both offices at the same time