



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

(501) 371-2007

July 24, 1985

OPINION NO. 85-164

Mr. Bill McLean
Prosecuting Attorney
202 North Washington
Suite 106
El Dorado, Arkansas 71730

Dear Mr. McLean:

You have requested an opinion from our office on the following question:

Can the mayor of an incorporated town serve as a justice of the peace on the Quorum Court?

The Arkansas Supreme Court has held:

There are or may be two grounds upon which it may be successfully maintained that one who holds an office and accepts another, and endeavors to exercise the duties of both at the same time, will be ousted of the former in a proper proceeding and on proper showing. One is that the holding of the two offices at the same time is forbidden by the provisions of the constitution, and the other is where the duties of the two offices are incompatible.

State Ex. Rel. Murphy v. Townsend, 72 Ark. 180, 182, 79 S.W. 782, 782 (1909).

In Peterson v. Culpepper, 72 Ark. 250, 79 S.W. 783 (1909), the Court held, inter alia, that the Ark. Const. Art. 19, §6 prohibition against dual office holding refers to state offices only.

Accordingly, the inquiry must focus on whether the duties of the two offices are incompatible. "In other words, does the discharge of the duties of the one conflict with the duties of the other, to the detriment of the public good?" Townsend at 184, 79 S.W. at 783. (citing State v. Feibleman, 28 Ark. 424 (1873)). This is essentially a question of fact, and thus, requires a determination which is not the function of this office to make.

The foregoing opinion, which I hereby approve, was prepared by Chief Deputy Attorney General Rodney Parham.

Yours truly,

A handwritten signature of Steve Clark in dark ink, written over a horizontal line.

STEVE CLARK
Attorney General

SC:RP:lm