

MAYOR  
THOM SERRANI



CITY OF STAMFORD  
DEPARTMENT OF LAW  
308 WASHINGTON BOULEVARD  
P.O. BOX 10152  
STAMFORD, CT 06904-2152  
(203) 977-4081

SC  
CORPORATION COUNSEL  
MARY E. SOMMER

File

SENIOR ASSISTANT CORPORATION COUNSEL  
DEBORAH MORGAN STEEVES

ASSISTANT CORPORATION COUNSEL  
BARRY J. HOODMAN  
JAMES V. MINOR  
ALICE L. PERRY  
KENNETH B. POVODATOR  
RICHARD A. ROBINSON  
JOHN E. SMYTH

March 15, 1988

Honorable Thom Serrani, Mayor  
City of Stamford

Re: Opinion: Dual Office Holding and the  
Smith House Facilities Governing Board

Dear Mayor Serrani:

This is in response to your request that the Law Department research the law regarding whether a member of the Board of Representatives could also serve as a member of the Governing Board of the Smith House Facilities.

The State of Connecticut's Constitution does not clearly prohibit dual office holding on a municipal level. As to the State of Connecticut's three branches of government, Article 2 of the Constitution deals with the separation of powers and Article 3 creates and defines the General Assembly, the legislative body of the State of Connecticut. Prior to the 1955 Constitutional amendment, it was the opinion of the Attorney General for the State of Connecticut that Articles 2 and 3 of the Constitution did not prohibit dual office holding. In 1953, C.G.S. Title 2 section 5, the legislature enacted a dual office ban. On August 5th, 1955 the Constitution was amended and Article 3, section 11 was enacted which prohibits members of the General Assembly, during the term for which they were elected, from accepting any appointive position or office in the judicial or executive departments of state government. The statutory and constitutional ban applies only to members of the State Legislature.

11/25/88  
9

Unless there is a prohibition against dual office holding by municipal charter or ordinance, the common law is applicable to municipalities. Prior to 1977, there was a ban on dual office holding in the City of Stamford Charter. After the 1977 revision, the prohibition against dual office holding was eliminated. It has not been in any of the charters as amended subsequent to that date. That being the case, the common law applies to the City of Stamford as to whether there is a ban as to dual office holding. As stated in a lengthy article entitled "Dual Office Holding", 11 Conn. Law Rev. 707, at page 722-723:

"The common law doctrine of incompatibility was developed to preclude dual office holding not expressly prohibited by constitutional or statutory provisions. The emphasis of this doctrine has been on 'possible conflicts of governmental, as distinguished from public or private interests'. The policies behind the doctrine are two fold: to prevent the concentration of executive, judicial, and legislative power in the hands of one individual and to prevent individuals from using their offices for personal gain and advancement. To determine incompatibility, the courts generally inquire whether one office has the power of appointment or removal over the other, whether one office is subordinate to the other, or whether there is an inherent inconsistency or repugnancy between the two... The Connecticut courts also consider ability to regulate compensation to be relevant to any determination of incompatibility. The courts permit public policy considerations to be factored into the equation as well".

The Connecticut courts developed a test of incompatibility. Basically, this requires looking at each potential or actual dual office situation and viewing it individually on the facts.

In an early case, 1936, from Stamford; State ex rel. Schenck v. Barrett, 121 Conn. 237, the court found that the Deputy Commissioner of Finance could not also be a member of the Board of Finance. It found that the two offices were incompatible. The Schenck case, supra, stated as follows:

"Incompatibility is apparent when the holder of one office is subordinate to or has supervision over the other, or has the power of appointment, removal, or punishment of that other or the audit of his accounts, or the regulation of his compensation".

"Under the common law, it is well settled that a person may not simultaneously hold two offices which are incompatible. When one accepts and qualifies for a second office which is incompatible with the first, he vacates, or by implication resigns the first. Stolberg v. Caldwell, 175 Conn. 586; the Schenck supra; State ex rel Putera v. Lombardi, 146 Conn. 299."

A subsidiary issue that must be considered while one is considering dual office holding is what is a Public Office. The Connecticut courts have stated that the essential characteristics of a "Public Office" are (1) an authority conferred by law, (2) a fixed tenure of office, (3) the power to exercise some portion of the sovereign functions of government. Murach v. Plan and Zoning Commission of New London, 196 Conn. 192; Kelly v. Bridgeport, 111 Conn., 667; Spring v. Constantino, 168 Conn. 568; Housing Authority v. Dorsey, 164 Conn., 247; and the Stolberg Case supra. As a general rule, a member of a municipal board or commission holds public office. 63A Am. Jur. 2d, Public Officers and Employees, Sec. 21 (1984).

In the Murach case, supra, the issue was whether a paid municipal fireman could be a member of the Planning and Zoning Commission. The Court held he could not be a member of the Planning Commission. Unlike the case we are considering, there is a state statute, C.G.S. 8-19 which provides: "Any municipality may create by ordinance a Planning Commission, which shall consist of five members who shall be electors of such municipality holding no salaried municipal office and whose terms of office and method of election or appointment shall be fixed in the ordinance."

The cases that have considered the problem of dual office holding at a municipal level, have either involved state statute requirements such as Planning and Zoning or the Housing Authority, or the positions have been compensated. In considering whether a member of the Board of Representatives can be a member of the Board of Directors of the Smith House Facilities the above test and law must be considered. Neither the position of representative on the Board of Representatives of the City of Stamford or as a member of the Smith House Board of Directors is compensated. Both these positions are volunteer positions. The members of either of these positions cannot effect compensation where there is none. However, the Board of Representatives will act upon the budgetary and appropriation matters for the Smith House Facilities.

Under the specific facts of this case there doesn't appear to be a ban to the dual office holding. If a member of the Board of Representatives is appointed to the Smith House Board of Directors the Representative may not vote on matters related to Smith House.

I hope this assists you in considering the question you raised.

- Very truly yours,



Alice L. Perry  
Asst. Corporation Counsel

ALP/jmm  
balp31488