

City Clerk Staff

From: Jim Nugent
Sent: Friday, September 16, 2022 11:48 AM
To: Shannon Therriault
Cc: Grp. City Council and City Web Site; Dept. Mayors Office; Dept. City Clerk; Leigh Griffing; Angela Simonson; Dept. Attorney
Subject: Common law legal doctrine of incompatible public offices creates conflict of interest that prevents city/county health department employee serving simultaneously as city council member.

SHANNON:

You inquired on behalf of a city/county health department staff person as to whether a city/county health department staff person could simultaneously serve as a city council member. After your telephone inquiry late yesterday afternoon in addition to the concerns discussed yesterday afternoon, I performed additional legal research and staff attorney Susan Aaberg also performed legal research pertaining to the common law legal doctrine of incompatible public offices.

Legal research of the common law legal doctrine of incompatible offices holds that a public officer cannot simultaneously hold two incompatible public offices the duties of which could give rise to possible conflicts of governmental interests. The common law legal doctrine of incompatible public offices is applicable to instances where an individual simultaneously holds two public offices where the functions of the public offices are inherently inconsistent and/or where there are conflicting interests.

Montana Supreme Court and Montana Attorney General law are consistent with the common law legal doctrine of incompatible public offices not being simultaneously held. See *State ex. Rel Klick v. Wittmer*, 50 Mont. 22, 144 P. 648(1914) and 47 Opinion Montana Attorney General 19 (1998).

As we discussed yesterday afternoon there are several incompatible potential functions responsibilities and/or duties associated with simultaneously being a city county health department staff person and a city council member. These concerns include; but are not necessarily limited to:

- (1) The name of the entity/department is city/county health department;
- (2) The city provides significant amount of financial/funding support to the city/county health department via city council vote and approval;
- (3) . The city council is involved in making several appointments to the city/county health board which could pose inherent incompatibility for the city/county health department employee;
- (4) The city/county health department staff person would be involved in some health code and health department regulations;
- (5) The city/county health department staff person would have some work reviewing subdivisions;
- (6) The city/county health department staff person could be involved in some water regulation enforcement and the City of Missoula owns the community water system, Missoula Water.
- (7) Etc.; etc..

Even though the city/county health department staff person is a county employee for personnel and salary, etc.; purposes; there are many instances where the city/county health department staff person functions/duties/responsibilities could/would potentially have inherently inconsistent incompatible responsibilities if simultaneously holding the public offices of city/county health department staff and city council member.

Therefore, pursuant to the common law legal doctrine of incompatible public offices, in the above identified factual circumstances, the city county health department staff person could not simultaneously hold the public offices of city council and city/county health department staff person.

JIM NUGENT