

## COMPATIBILITY OF OFFICES

Because public offices are considered public trusts created for the benefit of the public, the same person may not hold two public offices that are considered incompatible. Determining whether two offices are incompatible can be a difficult task. Only a few statutes and court cases directly address the issue of compatibility, and they apply to only a few offices. Much of the discussion regarding compatibility of offices is provided in opinions of the Attorney General, which are not binding but may be persuasive for courts considering these issues.

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### 1. WHAT IS AN INCOMPATIBLE OFFICE

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At the heart of the issue is a determination that the nature of the two offices are so inherently inconsistent and repugnant to each other that it would be a violation of the public trust for the same person to hold both offices. To put it another way, it follows the idea a person cannot fully serve two masters at the same time, or that the fox cannot guard the hen house. “Office” for the purposes of determining compatibility includes all elected offices and those appointed positions involving independent authority under law to determine public policy or to make a final decision not subject to the supervisory approval or disapproval of another.<sup>1</sup>

A person holding public office may run for another public office even if the two positions are incompatible. However, when “two offices are incompatible, the acceptance of the second operates as a resignation of the first.”<sup>2</sup>

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### 2. KNOWN INCOMPATIBLE OFFICES

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The following is a list of office known or believed to be incompatible. This is not a complete list, but it mentions some of the more common positions.

**This is not a  
Conflict of Interest Issue**

Incompatible offices are often mistakenly referred to as conflicts of interest, but that is not correct. A conflict of interest arises when an official has a personal financial interest in a contract or a matter on which the official has a vote or control. Incompatible offices exist even if there is no financial interest involved.

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<sup>1</sup> *McCutcheon v. City of St. Paul*, 216 N.W.2d 137, 139 (Minn. 1974).

<sup>2</sup> *Hoffman v. Downs*, 145 Minn. 465, 467, 177 N.W. 669, 670 (1920).

**School Board Member:** Compatible with serving on a town board of supervisors in a town that is *not* exercising the powers of a statutory city under Minn. Stat. § 368.01 (i.e., an urban town).<sup>3</sup>

**Soil & Water Conservation District Supervisor:** Compatible with the office of town clerk or supervisor in a town with a population of under 2,500, except for districts located in Anoka, Hennepin, Ramsey, or Washington County.<sup>4</sup> The person must refrain from any matter on the conservation district board that has a substantial effect on both the district and the town.

**Vacant Elective Position:** An officer who has the power alone or as a board member to make the appointment to fill the vacant elected position is prohibited from being appointed to the position.<sup>5</sup> The officer cannot take the position even if he or she resigns from office before the appointment is made. For example, a supervisor could not be appointed to fill a vacancy in the elected clerks or treasurer's position, and a clerk could not be appointed to fill a vacant supervisor position.

**County Commissioner:** Incompatible with any other elected office, including town office.<sup>6</sup>

**Park District Commissioner:** Incompatible with any other public office, including town office, except notary public.<sup>7</sup>

**County Assessor:** A person may not serve as both a town board supervisor and as the County Assessor in the county where the township is located.<sup>8</sup> It appears a person could serve as town clerk or treasurer and the County Assessor at the same time.

**Town Assessor:** A person may not serve as both the town assessor and a town supervisor for the same township.<sup>9</sup>

**Fire Chief:** It is likely incompatible for a town supervisor to also serve as the fire chief of the township's fire department.<sup>10</sup> The positions of town supervisor and fire chief of the town's fire department are likely incompatible because the town board: (1) supervises the fire chief, including discipline and termination matters; (2) sets the fire chief's salary and compensation; and (3) remains responsible for fire department spending decisions. The public trust would be undermined by allowing a person to set his own salary, vote on his discipline or termination, and review spending decisions in the interest of the public.

**State Legislator:** It is incompatible for a person to serve as both a town officer and a state legislator.<sup>11</sup>

There are many other Attorney General Opinions related to city officials and incompatible offices that are likely to apply similarly to township officials. Town officers with questions regarding the compatibility of offices are welcome to call the office for additional information.

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<sup>3</sup> Minn. Stat. § 367.033.

<sup>4</sup> Minn. Stat. § 103C.315, subd. 6.

<sup>5</sup> Minn. Stat. § 471.46.

<sup>6</sup> Minn. Stat. § 375.09.

<sup>7</sup> Minn. Stat. § 398.05.

<sup>8</sup> Minn. Stat. 273.061, subd. 1c.

<sup>9</sup> Minn. Stat. 273.061, subd. 1c.

<sup>10</sup> A.G. Op. 358-E-9 (Apr. 5, 1971).

<sup>11</sup> Minn. Const. art. IV, § 5 ("No senator or representative shall hold any other office under the authority of the United States or the state of Minnesota, except that of postmaster or of notary public.").