Opinion No. 2012-050

May 2, 2012

The Honorable James L. Word
State Representative
6503 Little Dove Drive
Pine Bluff, Arkansas 71603-7945

Dear Representative Word:

You have requested my expedited opinion on the following election-related questions:

1. Can a person run for two positions simultaneously?

2. If so, what is the procedure if that person is elected to both offices, in this instance, justice of the peace and county judge?

RESPONSE

The answer to your first question is generally "yes," in my opinion.[1] I have enclosed several opinions issued by my predecessors to this effect, with which I fully concur.[2] Given your request that this opinion be expedited, I will not restate

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[1] I assume that the federal Hatch Act is not implicated in connection with the positions at issue, i.e., justice of the peace and county judge. The Hatch Act, which is codified as 5 U.S.C. § 1501 *et seq.*, provides that a state or local officer or employee covered by the act may not be a candidate for elective office. 5 U.S.C. § 1502(a)(3). *See* Op. Att'y Gen. 96-075. The act applies to individuals whose principal employment by a state or local agency is in connection with an activity that is financed in whole or in part by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1501(4). Non-partisan races and candidates for those races are exempted from the Hatch Act. 5 U.S.C. § 1503.

[2] Op. Att'y Gen. Nos. 2006-015 (opining that a person may run for the offices of justice of the peace and city council member simultaneously) and 94-305 (finding no prohibition against the name of a candidate for alderman also appearing on the ballot as a candidate for justice of the peace). *See also* Ark. Op. Att'y Gen. Nos. 2000-103 (same regarding dual candidacy for circuit-chancery judge and municipal court judge); 94-256 (same regarding mayor and alderman).

the substance of these opinions, but instead refer you to the enclosures for the applicable legal analysis.

With regard to your second question, there is no statute addressed to this particular scenario. However, the holding of these two positions simultaneously would very clearly be contrary to law.[3] And the general rule in that circumstance is that the officeholder will retain the last office accepted.[4]

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM:EAW/cyh

Enclosures

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[3] *See* A.C.A. § 14-14-502(b)(1) (Supp. 2001) ("all legislative powers of the county governments are vested in the quorum court"); *id*. at (b)(2)(A)(i) ("The executive divisions of a county government shall consist of [inter alia] [t]he county judge"); *id*. at (c) ("No person or collection of persons being one of these departments, legislative, executive, or judicial, shall exercise any power belonging to either of the others, except in the instances expressly directed or permitted.")

[4] *Byrd v. State*, 240 Ark. 743, 746, 402 S.W.2d 121 (1966) (citing Corpus Juris Secundum). *See also* 3 *McQuillin Mun. Corp.* § 12.67 (3rd ed. 2011).

I cannot speculate as to which office will be retained and which forfeited. But it seems likely that this will depend upon when the oaths of office are taken (assuming the person presumes to enter upon both offices), since the oath is a prerequisite to assuming the office. *See* A.C.A. § 21-2-105(d)(2) (Supp. 2011); Ark. Const. art. 19, § 20.