

January 20, 1943

Honorable Joe Conway
 Attorney General
 Capitol Building
 Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Sir:

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 Complying with your request for an opinion as to whether a member of the Highway Commission is permitted to hold a municipal office, such as Mayor of an incorporated city, while serving as Highway Commissioner I am of the following opinion:

There is no statute prohibiting the Highway Commissioner from holding the position as Mayor of a city or other office in a municipality, such as is the case with respect to the members of the Legislature and members of the Industrial Commission.

Hence the question is to be determined by the provisions of the common law, which are: There is no prohibition against a person holding two such offices unless the duties of the offices are incompatible with each other.

The provision of our Code (Sec. 59-108) is that a Commissioner may not serve on any committee of any political party nor engage in political activities other than voting and, we believe, applies to this case. We doubt if serving as Mayor, school trustee, on the board of a water district, or the like, would be considered political activities. The question then is whether or not the duties of a Highway Commissioner are incompatible with those of a Mayor of a city. I believe that in many respects they are.

When the Highway Commission construct a highway through the city to connect up with State highways they enter into contracts with the city concerning the maintenance and control of such highways within the city and the duties of the two administrative bodies are incompatible.

When the Highway Commission construct highways through a city, under the Federal Law, providing for the expenditure of Federal funds within the limits of the city, the State enters into contracts with the city for such construction and the duties are incompatible with each other.

When the State constructs grade crossing elimination, such as underpasses in a city, with Federal Aid, the contracts between the city and the State are incompatible and the State and the city are adversary parties in the proceeding.

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The incorporated cities for a number of years have been attempting to secure legislation giving to incorporated cities a proportion of the gasoline tax, which is the principal source of revenue to the State. The actions of the cities are certainly adversary to the Highway Commission, who oppose these attempted diversions of funds upon the ground that they will result in a diversion of funds contrary to the Hayden-Cartwright Bill.

In these respects and in a number of others which may be disregarded here, the Highway Commission and the cities are adversary parties and the duties of the governing boards are incompatible.

While the question is not without some doubt we believe the safe course would be for the Commissioner to forego serving as a municipal officer of any character.

Very truly yours,

JOE CONWAY
ATTORNEY GENERAL

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APPROVED:

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