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ARIZONA ATTORNEY GENERAL

February 27, 1980

Mr. R. J. Borane, Secretary
Law Enforcement Merit System Council
2339 North 20th Avenue
Phoenix, AZ 85009

Re: I80-023 (R80-027)

Dear Mr. Borane:

We are writing in response to your request for an opinion on whether a member of the Law Enforcement Merit System Council may hold the office of justice of the peace while he is serving on the Council.

A public officer is not precluded from holding more than one public office simultaneously unless a statute or the common law doctrine of incompatibility of public office prohibits the same.

In this instance, A.R.S. § 28-235.A, which bears on your question, provides:

The governor shall appoint a law enforcement merit system council consisting of three persons chosen on the basis of experience in and sympathy with merit principles of public employment, who shall not have held elective public office within one year preceding appointment. They shall not hold any other political office while serving on the council, and a vacancy shall be filled by the governor upon the same basis as the original appointment. They shall receive no compensation for their services.

We have no doubt that the office of justice of the peace is an elective public office, inasmuch as the office of justice of

the peace is made elective by Constitution,^{1/} and the duties imposed on justices of the peace are prescribed by law and involve some portion of the sovereign power,^{2/} thereby satisfying the test enunciated by the Arizona Supreme Court for determining when a position is a public office.^{3/}

Initially, we would observe that, inasmuch as a Council member may not have held an elective public office within one year preceding his appointment to the Council, the Legislature likely would have intended that a Council member also not hold an elective public office while he served on the Council. To conclude otherwise, would render the one-year limitation meaningless.

^{1/} Ariz. Const., Art. 6, § 32 provides:

Section 32. The number of justices of the peace to be elected in precincts shall be as provided by law. Justices of the peace may be police justices of incorporated cities and towns.

The jurisdiction, powers and duties of courts inferior to the superior court and of justice courts, and the terms of office of judges of such courts and justices of the peace shall be as provided by law. The legislature may classify counties and precincts for the purpose of fixing salaries of judges of courts inferior to the superior court and of justices of the peace.

The civil jurisdiction of courts inferior to the superior court and of justice courts shall not exceed the sum of two thousand five hundred dollars, exclusive of interest and costs. Criminal jurisdiction shall be limited to misdemeanors. The jurisdiction of such courts shall not encroach upon the jurisdiction of courts of record but may be made concurrent therewith, subject to the limitations provided in this section.

^{2/} Title 22, Arizona Revised Statutes.

^{3/} A public office is created by law with certain definite duties involving some portion of the sovereign power imposed by law on the office. Tomaris v. State, 71 Ariz. 147, 224 P.2d 209 (1951).

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We think A.R.S. § 28-235 makes this intention manifest by prohibiting the holding of "elective public office within one year preceding appointment" and the holding of "any other political office while serving on the council." In our opinion, A.R.S. § 28-235 stands for the proposition that a Council member may not have held an elective public office within one year preceding his appointment and may not hold either an elective public office or any other political office while serving on the Council.

Whether a Council member holds the office of justice of the peace by election or by appointment to fill an unexpired term is not material to your inquiry, because A.R.S. § 28-235 is directed toward the holding of the office rather than to the means through which the incumbent came to hold the office.

Sincerely,



BOB CORBIN
Attorney General

BC/mm