

# Compatibility of Offices

This information brief addresses the area of Minnesota state law that determines whether one person may hold specific combinations of elected or appointed public positions at the same time.

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## Introduction

This information brief deals with compatibility of public offices, the area of Minnesota state law that determines whether one person may hold specific combinations of elected or appointed public positions at the same time. The information brief responds to continuing interest legislators have in two aspects of this issue by providing:

1. An understanding of the general rationale and specific constitutional and statutory provisions, court cases, and attorney general opinions on the subject, so that legislators may evaluate or change public policy in the area; and
2. Guidance for individual legislators, other elected officials, and public employees in determining what public positions they may occupy simultaneously.

This information brief addresses only state law questions. State or local officials or employees who want to simultaneously hold a federal government position not prohibited by state law should also consult federal law to determine whether the combination is lawful.

This information brief addresses only combinations of two offices. By definition there is no compatibility of office problem if a holder of an elected or appointed office also occupies a volunteer or paid position that is not defined as an office. Other laws or employment agreements may be implicated if an officeholder is simultaneously a state university teacher, volunteer fire fighter, or police officer. However, such combinations do not raise the issue of compatibility of offices.

## Compatible and Incompatible Offices Defined

**“Compatible”** is a legal term applied to a combination of public offices that can be occupied simultaneously by one person without creating a conflict of interest.

**“Incompatible,”** when applied to a combination of public offices, means that a conflict of interest would exist if one person held them at the same time.

**“Office,”** in this context, includes all elected offices and those appointed positions that have independent authority under law to determine public policy or to make a final decision not subject to a supervisor’s approval. *McCutcheon v. City of St. Paul*, 216 N.W.2d 137, 139 (Minn. 1974).

The *McCutcheon* case was influential in determining Minnesota law regarding compatibility of offices. In *McCutcheon* the court indicated that the job of police officer was not an office for purposes of legal rules governing the compatibility of multiple offices. However, the job of police chief would fit the definition of office that the court relied on in that case. Thus the court ruled that an individual could be a legislator and police officer, but not a legislator and police chief at the same time.

Statutes follow an approach similar to the court's in *McCutcheon* when designating public employment positions as offices that are incompatible with other public elected or appointed positions. For example, the legislative auditor is a state employee with considerable independent authority who by statute is prohibited from holding any other public office. **Minn. Stat. § 3.97, subd. 1.**

## **Seeking or Holding Incompatible Offices; Automatic Resignation**

Unless otherwise limited by law, an individual may apply for a job or run for an office incompatible with a current position without resigning from the current position. Op. Att'y Gen. 358-E-6, Feb. 18, 1958. However, if he or she accepts a position or receives a certificate of election to an office considered incompatible with the previously held job or office, the matter is treated as if the individual had resigned from the first position. *Hilton v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923).

Serving in either position without pay does not eliminate the incompatibility of the offices because there is continuing potential for conflict between the duties of the two offices, according to an attorney general ruling.

## **Sources and Rationales for Compatibility Rules**

### **Minnesota Constitution**

The Minnesota Constitution governs two important compatibility issues:

1. Legislators may not hold any other federal or state public office except postmaster or notary public
2. Supreme court, court of appeals, and district judges may not hold any other state office and may not hold any federal office except a military reserve commission

There is a separate rationale for each of these prohibitions.

Legislators are barred from holding another office so that they will not be able to benefit personally from their elected position. Because of the constitutional restriction, a legislator cannot use official influence to be appointed or elected to another position; nor is he or she subject to being influenced in voting by the hope of creating a new position that the legislator would then try to obtain. *Childs v. Sutton*, 65 N.W. 262 (Minn. 1895); *Anderson v. Erickson*, 230 N.W. 637 (Minn. 1930).

Judges are restricted from holding other offices so that they will give their full attention to judicial duties and will not risk involving the judiciary in any political controversy. ABA Comm. on Professional Ethics and Grievances, Formal Op. 193 (1939); Reporter's Notes to the Code of Judicial Conduct 97 (1973).

## Minnesota Supreme Court Cases

Compatibility is not entirely determined by constitution or statute. It would be impossible to list all the potential combinations of public offices and then designate each combination either compatible or not. If there is no applicable statute or constitutional provision, but there is a concern that holding two positions involves a conflict of interest, a lawsuit is always possible to settle the question.

There have been a few Minnesota Supreme Court cases on the compatibility of a pair of offices in the absence of constitutional or statutory guidelines. In these cases the court relies on a common law test that two offices are compatible:

1. If one hires, supervises or evaluates, or sets the salary for the other; or
2. If occupying the two offices is likely to result in occasions where the individual must harm or neglect one position in order to perform duties that are part of the other position. See, *Hilton v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923).

When one office supervises or evaluates another, it is clear that one individual cannot objectively be his or her own supervisor or critic. All the Minnesota court cases finding incompatibility have involved this kind of situation. Thus, the court ruled that one person could not be simultaneously a county commissioner and an officer of a school district in the same county, because county boards had authority over the organization of school districts at that time. *Hilton*.

## Minnesota Statutes

More than a dozen statutes provide that certain combinations of offices may not be held simultaneously by one person. The statutes reflect the common law test followed by the Minnesota Supreme Court.

For example, the principle that an individual cannot supervise or evaluate himself or herself is illustrated in the provision that a person cannot be a member of the Metropolitan Parks and Open Space Commission (MPOSC) or the Metropolitan Sports Facilities Commission (MSFC) while serving as a member of the Metropolitan Council or any other metropolitan agency. [Minn. Stat. §§ 473.303, subd. 4; 473.553, subd. 4](#). This prohibition appears based on the fact that the council has such powers over the commissions as authority to adopt a policy plan (for the MPOSC) and to approve the budget (for the MPOSC, MSFC).

The statutes also implement the principle that even if one office does not supervise the other, there may be combinations that involve an undesirable potential for divided loyalties. An illustration is the ban on sheriffs holding any other elective office or practicing as an attorney. [Minn. Stat. § 387.13](#).

## Attorney General Opinions

The largest source of authority on the compatibility or incompatibility of offices is attorney general opinions. The attorney general is authorized to give legal opinions to the legislature and

local units of government. **Minn. Stat. §§ 8.05, 8.07** An attorney general opinion on a matter of school law is decisive until a court reaches a different conclusion on the issue. **Minn. Stat. § 8.07**. The law is silent on the status of an opinion given on other subjects. As a practical matter, an attorney general opinion on any subject is deemed helpful and generally is followed until a statute or court decision provides different authority on the issue.

The attorney general opinions on the compatibility of offices not covered by statute follow the common law test described above under “Minnesota Supreme Court Cases.”

## **Statutory Trends in Compatibility Designations**

Incompatibility as a statutory concept is not currently expanding. Statutes designating offices incompatible were enacted in a slow trickle from the nineteenth century until the 1970s. In the 1970s a number of new incompatibility restrictions were imposed with the creation of the office of legislative auditor and the metropolitan government commissions. Since then few combinations of offices have been designated incompatible by statute.

Occasionally, laws are enacted to specify that particular offices are not incompatible. For example, in 1981 deputy sheriffs were eliminated from a prohibition on seeking elective office that had covered them since at least 1905. **Laws 1981, ch. 163, § 2**. In 1995, individuals were allowed to serve simultaneously in city offices and on soil conservation district boards in certain small cities. **Laws 1995, ch. 222**.

## **Statutory Exceptions to Incompatibility Designation**

In rare instances, concern about possible conflicts between two offices may yield to other legislative policy goals or recognition of practical limitations. An example is the statute allowing one person to serve as city, school district, and county attorney in counties with a population not greater than 12,000. **Minn. Stat. § 481.17**. This provision recognizes that there probably are not enough lawyers residing in such counties for each office to be occupied by a different person, however desirable it might be for each unit of government to have its own lawyer.

## Specific Compatible and Incompatible Offices

The following chart contains all known combinations of existing state and local offices that have been expressly designated compatible or incompatible by constitution, statute, case, or attorney general opinion.

Office or Position Paired With	Compatible Incompatible	Source
<b>Campaign Finance and Public Disclosure Board Member or Employee</b>		
Candidate for partisan elective office	I	<a href="#">Minn. Stat. § 10A.02</a> , subd. 7
City Attorney	I	Op. Att’y Gen. 358, Dec. 18, 1970
<b>City Attorney</b>		
County Attorney	C & I <sup>1</sup>	<a href="#">Minn. Stat. § 481.17</a>
School District Attorney	C & I <sup>2</sup>	<a href="#">Minn. Stat. § 481.17</a>
Legislator	C & I <sup>3</sup>	Op. Att’y Gen. 358, Dec. 18, 1970
City Assessor	I	Op. Att’y Gen. 358, Dec. 18, 1970
Mayor	I	Op. Att’y Gen. 358e-3, March 6, 1946
City Treasurer	I	Op. Att’y Gen. 358, Dec. 18, 1970
Municipal Public Utilities Commissioner	I	Op. Att’y Gen. 358e-3, Dec. 4, 1931
City Charter Commission Member	C	<a href="#">Minn. Stat. § 410.05</a> , subd. 1
<b>City Charter Commission Member</b>		
Any elective or appointive office other than judicial. Charter may exclude members of the city’s governing body	C	<a href="#">Minn. Const. art. 12</a> , § 5; <a href="#">Minn. Stat. § 410.05</a> , subd. 1

<sup>1</sup> In counties with a population not greater than 12,000 these offices are compatible unless a specific case involves a conflict of interest between the government units represented. For purposes of prosecuting violations of state laws or municipal charters, ordinances, or regulations, county and city attorney are compatible offices regardless of county population. The office of assistant county attorney has been found incompatible with the office of city attorney. Op. Att’y Gen. 358a-1, Jan. 26, 1941.

<sup>2</sup> In counties with a population greater than 12,000, these offices are incompatible. For smaller counties, they are compatible except for individual cases where there is a conflict between the government entities represented.

<sup>3</sup> Not incompatible if the attorney is an independent contractor rather than a city officer who takes an oath and posts bond.

Office or Position Paired With	Compatible Incompatible	Source
<b>City Council Member</b>		
City Assessor for the same city	I	<a href="#">Minn. Stat. § 273.061</a> , subd. 1c
County Assessor in the same county	I	<a href="#">Minn. Stat. § 273.061</a> , subd. 1c
County Attorney	I	Op. Att’y Gen. 358, Dec. 18, 1970
County Auditor	I	Op. Att’y Gen. 358, Dec. 18, 1970
County Commissioner	I	<a href="#">Minn. Stat. § 375.09</a> , subd. 1
County Treasurer	C	Op. Att’y Gen. 358, Dec. 18, 1970
Legislator	I	<a href="#">Minn. Const., Art. IV</a> , § 5
Mayor	I <sup>4</sup>	Op. Att’y Gen. 358, Dec. 18, 1970
Neighborhood Revitalization Program Policy Board	C	<a href="#">Minn. Stat. § 469.1831</a> , subd. 6
Soil and Water Conservation District Member in specified small cities	C	<a href="#">Minn. Stat. § 103C.315</a> , subd. 6
Volunteer Fire Department Chief	I	Op. Att’y Gen. 358e-9, April 5, 1971
<b>County Assessor</b>		
County Attorney	I	<a href="#">Minn. Stat. § 273.061</a> , subd. 1
County Auditor (appointed)	C <sup>5</sup>	<a href="#">Minn. Stat. § 273.061</a> , subds. 1, 1b
County Commissioner	I	<a href="#">Minn. Stat. § 273.061</a> , subd. 1c
County Treasurer (appointed)	C <sup>6</sup>	<a href="#">Minn. Stat. § 273.061</a> , subds. 1a, 1b
County Auditor-Treasurer (appointed)	C <sup>7</sup>	<a href="#">Minn. Stat. § 273.061</a> , subds. 1a, 1b
City Council of city in same county	I	<a href="#">Minn. Stat. § 273.061</a> , subd. 1c
Town Board Supervisor of town in same county	I	<a href="#">Minn. Stat. § 273.061</a> , subd. 1c
<b>County Attorney</b>		
City Attorney	C & I <sup>8</sup>	Minn. Stat. § 481.17
School District Attorney	C & I <sup>9</sup>	Minn. Stat. § 481.17

<sup>4</sup> [Minnesota Statutes section 412.152](#) allows a statutory city mayor to be chief of an independent, nonprofit firefighting corporation under specified circumstances.

<sup>5</sup> See statute for qualifiers.

<sup>6</sup> See statute for qualifiers.

<sup>7</sup> See statute for qualifiers.

<b>Office or Position Paired With</b>	<b>Compatible Incompatible</b>	<b>Source</b>
County Assessor	I	<a href="#">Minn. Stat. § 385.01</a>
County Treasurer	I	<a href="#">Minn. Stat. § 385.01</a>
<b>County Auditor</b>		
County Surveyor	I	<a href="#">Minn. Stat. § 384.01</a>
County Treasurer	I <sup>10</sup>	<a href="#">Minn. Stat. § 384.01</a>
County Assessor	I	Op. Att’y Gen. 358, Dec. 18, 1970
<b>County Commissioner</b>		
County Housing Redevelopment Authority member	I	Op. Att’y Gen. 358a-3, Nov. 29, 1976
Employee of the county where commissioner	I	<a href="#">Minn. Stat. § 375.09</a> , subd. 1
Hospital Board Member	C	Op. Att’y Gen. 358a-3, Dec. 26, 1972
Hospital District Board Member	I	<a href="#">Minn. Stat. § 375.09</a> , subd. 1
County Treasurer	I	<a href="#">Minn. Stat. § 385.01</a>
Certain other commissioners supported by county taxes (St. Louis County)	C	<a href="#">Minn. Stat. § 383C.09</a>
Neighborhood Revitalization Program Policy Board	C	<a href="#">Minn. Stat. § 469.1831</a> , subd. 6
<b>County Treasurer</b>		
County Auditor, County Attorney, County Commissioner, County Recorder, Sheriff	I <sup>11</sup>	<a href="#">Minn. Stat. § 385.01</a>

<sup>8</sup> In counties with a population not greater than 12,000 these offices are compatible unless a specific case involves a conflict of interest between the government units represented. For purposes of prosecuting violations of state laws or municipal charters, ordinances, or regulations, county and city attorney are compatible offices regardless of county population.

The office of assistant county attorney has also been found incompatible with the office of city attorney. Op. Att’y Gen. 358a-1, Jan. 26, 1941.

<sup>9</sup> In counties with a population not greater than 12,000 these offices are compatible unless a specific case involves a conflict of interest between the government units represented.

<sup>10</sup> The offices of auditor and treasurer can in effect become compatible if the county decides to consolidate them into a single auditor-treasurer’s office. [Minn. Stat. §§ 375A.10](#), subd. 2; [383D.09](#), subd. 1.

<sup>11</sup> The offices of auditor and treasurer can in effect become compatible if the county decides to consolidate them into a single auditor-treasurer’s office. [Minn. Stat. §§ 375A.10](#), subd. 2; [383D.09](#), subd. 1.

Office or Position Paired With	Compatible Incompatible	Source
<b>Court of Appeals Judge</b>		
All federal offices except military reserve	I	<a href="#">Minn. Const. art. VI, § 6</a>
Any office under the state	I	<a href="#">Minn. Const. art. VI, § 6</a>
<b>District Judge</b>		
All federal offices except military reserve	I	<a href="#">Minn. Const. art. VI, § 6</a>
Any office under the state	I	<a href="#">Minn. Const. art. VI, § 6</a>
<b>Firefighter's Civil Service Commission Member</b>		
Any other office or employment under the city, the United States, the state, or any of the state's political subdivisions	I <sup>12</sup>	<a href="#">Minn. Stat. § 420.03</a>
<b>Housing Redevelopment Authority Member</b>		
Council member in that city	C	<a href="#">Minn. Stat. § 469.003, subd. 6</a>
<b>Legislative Auditor</b>		
Any other public office	I	<a href="#">Minn. Stat. § 3.971, subd. 1</a>
<b>Legislator</b>		
All federal offices, except postmaster	I	<a href="#">Minn. Const. art. IV, § 5</a>
All state offices, except notary public, including:	I	<a href="#">Minn. Const. art. IV, § 5</a>
- state fair board	I	Op. Att'y Gen. 1921, No. 418
- mayor	I	<a href="#">Minn. Const. art. IV, § 5</a>
- police chief	I	<i>McCutcheon v. City of St. Paul</i> , 216 N.W.2d 137 (Minn. 1974)
- police officer	C	<i>McCutcheon</i>
- city assessor	I	Op. Att'y Gen. 358G, Nov. 21, 1950
City Attorney	C & I <sup>13</sup>	Op. Att'y Gen. 358, Dec. 18, 1970
Neighborhood Revitalization Program Board	C	<a href="#">Minn. Stat. § 469.1831, subd. 1</a>

<sup>12</sup> With the exception of notary public or member of a civil service commission for police or other municipal personnel.

Office or Position Paired With	Compatible Incompatible	Source
State Employment	C <sup>14</sup>	<a href="#">Minn. Stat. § 43A.32</a>
<b>Local Government Officers (city, county, school district, and town)</b>		
A vacancy in any elective office for which the officer has the power alone or as a board member to make an appointment	I	<a href="#">Minn. Stat. § 471.46</a>
State civil service jobs	C <sup>15</sup>	<a href="#">Minn. Stat. § 43A.32, subd. 2</a>
<b>Mayor</b>		
City Council Member	I	Op. Att’y Gen. 358, Dec. 18, 1970
City Treasurer	I	Op. Att’y Gen. 358e-7, March 5, 1965
County Attorney	I	Op. Att’y Gen. 358, Dec. 18, 1970
County Auditor	I	Op. Att’y Gen. 358, Dec. 18, 1970
County Commissioner	I	<a href="#">Minn. Stat. § 375.09</a>
County Treasurer	C	Op. Att’y Gen. 358, Dec. 18, 1970
Municipal Liquor Store Manager	I	Op. Att’y Gen. 218-R, Feb. 25, 1946
School Board Member or Clerk	I	Op. Att’y Gen. 358, Dec. 18, 1970
Soil and Water Conservation District Supervisor in certain small cities	C & I	<a href="#">Minn. Stat. § 103C.315, subd. 6</a>
Volunteer Fire Department Chief	C <sup>16</sup>	<a href="#">Minn. Stat. § 412.152</a>
Sheriff	I	<a href="#">Minn. Stat. § 387.13</a>
City Assessor	I	Op. Att’y Gen. 358, Dec. 18, 1970
Court Administrator (formerly district court clerk)	C	Op. Att’y Gen. 1920, No. 638, 639
<b>Metropolitan Parks and Open Space Commission Member</b>		
Judicial Office	I	<a href="#">Minn. Stat. § 473.303, subd. 4</a>
Metropolitan Council Member	I	<a href="#">Minn. Stat. § 473.303, subd. 4</a>

<sup>13</sup> Not incompatible if the attorney is an independent contractor rather than a city officer who takes an oath and posts bond.

<sup>14</sup> The legislator must take leave from state positions during session as specified in the statute.

<sup>15</sup> The individual must take a leave of absence from state employment if the state director of personnel determines there is a conflict with regular state employment.

<sup>16</sup> Statute specifies several conditions that must be met.

Office or Position Paired With	Compatible Incompatible	Source
Member of any other metropolitan agency (i.e., Metropolitan Airports Commission or Metropolitan Sports Facilities Commission)	I	<a href="#">Minn. Stat. § 473.303</a> , subd. 4
<b>Metropolitan Sports Facilities Commissioner (city council appointee)</b>		
Elected public official of the city of Minneapolis or any other political subdivision that shares territory with Minneapolis	I	<a href="#">Minn. Stat. § 473.553</a> , subd. 4
Metropolitan Council Member	I	<a href="#">Minn. Stat. § 473.553</a> , subd. 4
Metropolitan Agency Member	I	<a href="#">Minn. Stat. § 473.553</a> , subd. 4
Judicial Office	I	<a href="#">Minn. Stat. § 473.553</a> , subd. 4
State Government Office	I	<a href="#">Minn. Stat. § 473.553</a> , subd. 4
<b>Municipal Assessor</b>		
County Commissioner	I	Op. Att’y Gen. 358, Dec. 18, 1970
Legislator	I	Op. Att’y Gen. 358, Dec. 18, 1970
Mayor	I	Op. Att’y Gen. 358, Dec. 18, 1970
City Council Member	I	Op. Att’y Gen. 358, Dec. 18, 1970
Municipal Public Utilities Commissioner	C	Op. Att’y Gen. 358e-2, Dec. 29, 1943
<b>Municipal Clerk</b>		
County Assessor	C	Op. Att’y Gen. 358e-7, Feb. 15, 1967
County Attorney	C	Op. Att’y Gen. 358a-1, Nov. 24, 1922
Court Commissioner	C	Op. Att’y Gen. 358e-6, Sept. 15, 1944
City Assessor	C & I	Op. Att’y Gen. 1916, No. 379; 358e-2, Nov. 20, 1952
City Officer	C	Op. Att’y Gen. 358e-3, Jan. 6, 1942
Town Supervisor	I	Op. Att’y Gen. 358e-6, Feb. 19, 1947
Municipal Employee	I	Op. Att’y Gen. 1926 Rep #216
City Treasurer	C	Op. Att’y Gen. 358e-1, Feb. 9, 1959
School Board Member or Clerk	I	Op. Att’y Gen. 358E, Nov. 24, 1947; 358F, Dec. 27, 1937

Office or Position Paired With	Compatible Incompatible	Source
Soil and Water Conservation District Member for certain small cities	C	<a href="#">Minn. Stat. § 103C.315</a> , subd. 6
Town Supervisor	I	Op. Att’y Gen. 358E-7, Feb. 19, 1947
Town Clerk	C	Op. Att’y Gen. 358E, Feb. 14, 1921
School Superintendent	C	Op. Att’y Gen. 1920, No. 649
Court Administrator (formerly district court clerk)	C	Op. Att’y Gen. 358-A, Dec. 17, 1946
<b>Municipal Consolidation Commission Member</b>		
Any elective or appointive office	C	<a href="#">Minn. Stat. § 414.041</a> , subd. 2
<b>Municipal Employee</b>		
County Attorney	C	Op. Att’y Gen. 358a-1, Nov. 24, 1922
County Commissioner	C	Op. Att’y Gen. 358a-3, Jan. 30, 1959
<b>Municipal Public Utilities Commissioner</b>		
County Attorney	C	Op. Att’y Gen. 358a-1, Sept. 7, 1917
County Commissioner	C	Op. Att’y Gen. 358a-3, April 25, 1967
Legislator	I	Op. Att’y Gen. 358G, March 9, 1944/ Sept. 30, 1954
City Council Member	C <sup>17</sup>	<a href="#">Minn. Stat. § 412.341</a> , subd. 1
<b>Municipal Public Utilities Commission Employee</b>		
County Commissioner	C	Op. Att’y Gen. 358a-3, Jan. 30, 1959
Mayor	C	Op. Att’y Gen. 358e-1, Aug. 22, 1957
<b>Municipal Treasurer</b>		
County Assessor	C	Op. Att’y Gen. 358a, Aug. 21, 1958
County Commissioner	C	Op. Att’y Gen. 1936 Rep. #262
City Assessor	C	Op. Att’y Gen. 358e-2, Dec. 11, 1944
Town Supervisor	I	Op. Att’y Gen. 358e-6, March 18, 1938
City Public Utilities Commissioner	C	Op. Att’y Gen. 358, Oct. 28, 1953

<sup>17</sup> Only one member of the Public Utilities Commission created by a statutory city may be a city council member.



