

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 and court cases 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 questions of state law. 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 public employee in another capacity. 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 an impermissible conflict of interest.

“**Incompatible**,” when applied to a combination of public offices, means that an impermissible 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 because individual police officers have no independent policy-making authority. 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 is prohibited by statute from holding any other public office. [Minn. Stat. § 3.971](#), 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. *Hoffman v. Downs*, 145 Minn. 465, 467, 177 N.W. 669 (1920); Op. Att'y Gen. 358e-6, Feb. 18, 1958. However, "where two offices are incompatible, the acceptance of the second office operates as a resignation of the first." *Hoffman*, 145 Minn. at 467; *see also State ex rel. Hilton v. Sword*, 157 Minn. 263, 266, 196 N.W. 467 (1923).

In the case of judges, the Minnesota Constitution provides that an incumbent judge's term of office terminates upon filing as a candidate for a federal or other state elected office. [Minn. Const. art. VI](#), § 6.

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. [Minn. Const. art. IV](#), § 5.
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. [Minn. Const. art. VI](#), § 6.

There is a separate rationale for each of these prohibitions.

Among the reasons legislators are barred from holding another office is to prevent their benefiting personally holding legislative office. 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. *State ex rel. Anderson v. Erickson*, 63 Minn. 147, 230 N.W. 637 (1930); *State ex rel. Childs v. Sutton*, 180 Minn. 246, 65 N.W. 262 (1895).

Judges are restricted from holding elective office and engaging in other political activities to avoid eroding public confidence in the independence and impartiality of the judiciary. [Minn. Code of Jud. Conduct R. 4.1 cmt. 3, 4.5 cmt. 1](#) (2009) (amended 2011).

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: “Public offices are incompatible when their functions are inconsistent, their performance resulting in antagonism and a conflict of duty, so that the incumbent of one cannot discharge with fidelity and propriety the duties of both.” See *Hilton*, 157 Minn. at 264 (citing *State ex rel. Young v. Hays*, 105 Minn. 399, 117 N.W. 615 (1908) and *Kenney v. Georgen*, 36 Minn. 190, 31 N.W. 210 (1886)).

These issues frequently arise when the incumbent of one office exercises authority over or is involved with supervising or setting the salary for another. In one case, the court ruled that one person could not simultaneously serve as county commissioner and treasurer of a school district in the same county because county boards had authority over the organization of school districts at that time. *Hilton*, 157 Minn. at 264.

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 while serving as a member of the Metropolitan Council or any other metropolitan agency. [Minn. Stat. § 473.303](#), subd. 4. This prohibition appears based on the fact that the council has such powers over the commission as authority to adopt a policy plan and to approve its budget.

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

An additional substantial 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 apply 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 may not be enough lawyers residing in a small county 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 (allowances do exist to permit an attorney from another jurisdiction to appear on behalf of a unit of government in the county, if necessary to avoid a direct conflict of interest).

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, state statute, or case law.

This chart does not reflect compatibility designations that are contained in special laws enacted for local government, or in opinions issued by the attorney general; the number and complexity of special laws and attorney general opinions make a reliable summary in this publication impractical. However, copies of all attorney general opinions are available through the Office of the Attorney General; special laws and selected attorney general opinions are also maintained at the Minnesota State Law Library, various county law libraries, and the Legislative Reference Library. House Research Department staff are available to assist members of the legislature and legislative staff in locating special laws or opinions that may be relevant to a specific question.

Office or Position Paired With	Compatible Incompatible	Source
Campaign Finance and Public Disclosure Board Member or Employee		
Candidate for or holder of partisan elective office	I	Minn. Stat. § 10A.02 , subd. 7
City Assessor		
City Council member for the same city	I	Minn. Stat. § 273.061 , subd. 1c
Mayor for the same city	I	Minn. Stat. § 273.061 , subd. 1c
City Attorney		
County Attorney	C & I ¹	Minn. Stat. § 481.17
School District Attorney	C & I ²	Minn. Stat. § 481.17
City Charter Commission member	C	Minn. Stat. § 410.05 , subd. 1

¹ 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.

² 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.

Office or Position Paired With	Compatible Incompatible	Source
City Charter Commission Member		
Any elective or appointive office other than judicial. Charter may exclude members of the city's governing body	C	Minn. Const. art. 12, § 5 ; Minn. Stat. § 410.05 , subd. 1
City Council Member		
City Assessor for the same city	I	Minn. Stat. § 273.061 , subd. 1c
County Assessor in the same county	I	Minn. Stat. § 273.061 , subd. 1c
County Commissioner	I	Minn. Stat. § 375.09 , subd. 1
Legislator	I	Minn. Const. art. IV, § 5
Neighborhood Revitalization Program Policy Board	C	Minn. Stat. § 469.1831 , subd. 6
Soil and Water Conservation District member in specified small cities	C ³	Minn. Stat. § 103C.315 , subd. 6
County Assessor		
County Attorney	I	Minn. Stat. § 273.061 , subd. 1c
County Auditor (appointed)	C ⁴	Minn. Stat. § 273.061 , subd. 1a
County Auditor (elected)	I ⁵	Minn. Stat. § 273.061 , subd. 1c
County Auditor-Treasurer (appointed)	C ⁶	Minn. Stat. § 273.061 , subd. 1a
County Auditor-Treasurer (elected)	I ⁷	Minn. Stat. § 273.061 , subd. 1c
County Commissioner	I	Minn. Stat. § 273.061 , subd. 1c
County Treasurer (appointed)	C ⁸	Minn. Stat. § 273.061 , subd. 1a

³ See *infra* note 26.

⁴ See statute for qualifiers.

⁵ If a proposal to make the elected office appointive has been approved and will take effect within five years, the offices are not incompatible. [Minn. Stat. § 273.061](#), subd. 1b.

⁶ See statute for qualifiers.

⁷ If a proposal to make the elected office appointive has been approved and will take effect within five years, the offices are not incompatible. [Minn. Stat. § 273.061](#), subd. 1b.

⁸ See statute for qualifiers.

Office or Position Paired With	Compatible Incompatible	Source
County Treasurer (elected)	I ⁹	Minn. Stat. § 273.061 , subd. 1c
City Council of city in same county	I	Minn. Stat. § 273.061 , subd. 1c
City Mayor of city in same county	I	Minn. Stat. § 273.061 , subd. 1c
Town Board Supervisor of town in same county	I	Minn. Stat. § 273.061 , subd. 1c
County Attorney		
City Attorney	C & I ¹⁰	Minn. Stat. § 481.17
School District Attorney	C & I ¹¹	Minn. Stat. § 481.17
County Assessor	I	Minn. Stat. § 273.061 , subd. 1c
County Treasurer	I	Minn. Stat. § 385.01
County Auditor		
County Surveyor	I	Minn. Stat. § 384.01
County Treasurer	I ¹²	Minn. Stat. §§ 384.01, 385.01
County Assessor	C & I ¹³	Minn. Stat. § 273.061 , subs. 1a-1c
County Commissioner		
Other elective office	I	Minn. Stat. § 375.09 , subd. 1
Employee of the county where commissioner	I	Minn. Stat. § 375.09 , subd. 1

⁹ If a proposal to make the elected office appointive has been approved and will take effect within five years, the offices are not incompatible. [Minn. Stat. § 273.061](#), subd. 1b.

¹⁰ 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.

¹¹ 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.

¹² 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; *see, e.g.*, [§ 383D.09](#), subd. 1.

¹³ The offices are compatible if the county auditor is appointed but incompatible if the county auditor is elected. [Minn. Stat. § 273.061](#), subs. 1a-1c.

Office or Position Paired With	Compatible Incompatible	Source
Hospital District Board Member	I	Minn. Stat. § 375.09 , subd. 1
County Treasurer	I	Minn. Stat. § 385.01
Neighborhood Revitalization Program Policy Board	I	Minn. Stat. § 469.1831 , subd. 6
School District Treasurer	I	<i>State ex rel. Hilton v. Sword</i> , 157 Minn. 263, 264, 196 N.W. 467 (1923)
St. Louis County – certain other commissions or boards	C	Minn. Stat. § 383C.09
County Treasurer		
County Auditor	I ¹⁴	Minn. Stat. § 385.01
County Attorney	I	Minn. Stat. § 385.01
County Commissioner	I	Minn. Stat. § 385.01
County Recorder	I	Minn. Stat. § 385.01
Sheriff	I	Minn. Stat. § 385.01
Court of Appeals Judge		
All federal offices except military reserve	I	Minn. Const. art. VI, § 6
Any office under the state	I	Minn. Const. art. VI, § 6
District Judge		
All federal offices except military reserve	I	Minn. Const. art. VI, § 6
Any office under the state	I	Minn. Const. art. VI, § 6

¹⁴ 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; *see, e.g.*, [Minn. Stat. § 383D.09](#), subd. 1.

Office or Position Paired With	Compatible Incompatible	Source
Firefighter's Civil Service Commission Member		
Any other office or employment under the city, the United States, the state, or any of the state's political subdivisions	I ¹⁵	Minn. Stat. § 420.03
City Housing and Redevelopment Authority Commissioner		
City Council Member	C	Minn. Stat. § 469.003 , subd. 6
Legislative Auditor		
Any other public office	I	Minn. Stat. § 3.971 , subd. 1
Legislator		
All federal offices, except postmaster	I	Minn. Const. art. IV , § 5
All state offices, except notary public, and local offices, including:	I	Minn. Const. art. IV , § 5
- mayor	I	Minn. Const. art. IV , § 5
- police officer	C	<i>McCutcheon v. City of St. Paul</i> , 216 N.W.2d 137 (Minn. 1974) ¹⁶
Neighborhood Revitalization Program Board	C	Minn. Stat. § 469.1831 , subd. 6
State employee	C ¹⁷	Minn. Stat. § 43A.32 , subd. 2
Local Government Officers (city, county, school district, and town)		
A vacancy in any elective office for which the officer has the power alone or as a board member to make an appointment	I	Minn. Stat. § 471.46
State civil service jobs	C ¹⁸	Minn. Stat. § 43A.32 , subd. 2

¹⁵ With the exception of notary public or member of a civil service commission for police or other municipal personnel.

¹⁶ In *McCutcheon*, the court indicated that a chief of police may be prohibited from simultaneously serving as a state legislator, if the chief has “independent authority under law, either alone or with others of equal authority, to determine public policy or to make a final decision not subject to the supervisory approval or disapproval of another.” 216 N.W.2d at 139.

¹⁷ The legislator must take leave from state positions during session as specified in the statute.

Office or Position Paired With	Compatible Incompatible	Source
Mayor		
County Commissioner	I	Minn. Stat. § 375.09
Soil and Water Conservation District Supervisor in certain small cities	C & I ¹⁹	Minn. Stat. § 103C.315 , subd. 6
Fire Chief of an independent nonprofit firefighting corporation	C ²⁰	Minn. Stat. § 412.152
Sheriff	I	Minn. Stat. § 387.13
City Assessor	I	Minn. Stat. § 273.061 , subd. 1c
Metropolitan Parks and Open Space Commission Member		
Judicial Office	I	Minn. Stat. § 473.303 , subd. 4
Metropolitan Council member	I	Minn. Stat. § 473.303 , subd. 4
Member of any other metropolitan agency (i.e., Metropolitan Airports Commission or Metropolitan Sports Facilities Commission)	I	Minn. Stat. § 473.303 , subd. 4
Minnesota Sports Facilities Authority Member (mayor appointee)²¹		
Appointed official of a political subdivision	C	Minn. Stat. § 473J.07 , subd. 2
Municipal Clerk		
Soil and Water Conservation District member for certain small cities	C ²²	Minn. Stat. § 103C.315 , subd. 6

¹⁸ The individual must take a leave of absence from state employment if the Commissioner of Management and Budget determines there is a conflict with regular state employment.

¹⁹ See *infra* note 26.

²⁰ Statute specifies five conditions, all of which must be met in order for these offices to be compatible: “(1) the mayor does not appoint the fire chief; (2) the mayor does not set the salary or benefits of the fire chief; (3) neither officer performs functions that are inconsistent with the other’s; (4) neither officer in the officer’s official capacity contracts with the other; and (5) the mayor does not approve the fidelity bond of the fire chief.” [Minn. Stat. § 412.152](#).

²¹ Provisions also exist in law related to service as Metropolitan Sports Facilities Commissioner. See [Minn. Stat. § 473.553](#), subd. 4. These positions will become obsolete upon implementation of [Laws 2012, chapter 299](#), which replaces the Metropolitan Sports Facilities Commission with the Minnesota Sports Facilities Authority.

²² See *infra* notes 26 and 27.

Office or Position Paired With	Compatible Incompatible	Source
Municipal Consolidation Commission Member		
Any elective or appointive office	C	Minn. Stat. § 414.041 , subd. 2
Municipal Public Utilities Commissioner		
City Council Member	C ²³	Minn. Stat. § 412.341 , subd. 1
Park District Commissioner		
Any other public office, except notary public	I	Minn. Stat. § 398.05
Police and Fire Joint Civil Service Commission Member		
Any elected federal, state, local office	I	Minn. Stat. § 419.02
All employment by the city on whose commission the individual serves or by any police department	I	Minn. Stat. § 419.02
Employment as a member of any other city's civil service commission for firefighters or other municipal personnel	C	Minn. Stat. § 419.02
Public Utilities Commission Member		
Employee of a municipality subject to regulation by the Public Utilities Commission	I	Minn. Stat. § 216A.036
School Board Attorney		
County Attorney	I ²⁴	Minn. Stat. § 481.17
City Attorney	I ²⁵	Minn. Stat. § 481.17

²³ Only one member of the Public Utilities Commission created by a statutory city may be a city council member.

²⁴ In counties with a population not greater than 12,000, unless a specific case involves a conflict of interest between the government units represented, these offices are compatible. In larger counties, the offices are incompatible.

²⁵ 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.

Office or Position Paired With	Compatible Incompatible	Source
School Board Member		
County Commissioner	I	<i>State ex. rel. Hilton v. Sword</i> , 157 Minn. 263, 264, 196 N.W. 467 (1923).
Neighborhood Revitalization Program	C	Minn. Stat. § 469.1831 , subd. 6
Town Board of Supervisors in a nonurban town	C	Minn. Stat. § 367.033
Sheriff		
Any other elective office	I	Minn. Stat. § 387.13
Sheriff's Deputy		
Any other elective office	C	Minn. Stat. § 387.13
Soil and Water Conservation District Supervisor		
Mayor, Clerk, Clerk-Treasurer, or Council Member in specified statutory or home-rule charter cities	C & I ²⁶	Minn. Stat. § 103C.315 , subd. 6
Town Clerk or Town Supervisor in specified towns	C & I ²⁷	Minn. Stat. § 103C.315 , subd. 6

²⁶ Note that the default rule is that these offices are incompatible, but that rule is modified by statute. See [Minn. Stat. § 103C.315](#), subd. 6 (“The office of soil and water conservation district supervisor and the offices of mayor, clerk, clerk-treasurer, or council member in a statutory or home rule charter city of not more than 2,500 population contained in whole or in part in the soil and water conservation district are compatible offices and one person may hold both offices... This subdivision does not apply to an office located in whole or in part in Anoka, Hennepin, Ramsey, or Washington County.”). A person holding both offices may not vote or take other formal action on matters coming before either body that have a substantial effect on both. *Id.*

²⁷ Note that the default rule is that these offices are incompatible, but that rule is modified by statute. See [Minn. Stat. § 103C.315](#), subd. 6 (“The office of soil and water conservation district supervisor and the office of town clerk or town supervisor in a town of not more than 2,500 population contained in whole or in part in the soil and water conservation district are compatible offices and one person may hold both offices... This subdivision does not apply to an office located in whole or in part in Anoka, Hennepin, Ramsey, or Washington County.”). A person holding both offices may not vote or take other formal action on matters coming before either body that have a substantial effect on both. *Id.*

Office or Position Paired With	Compatible Incompatible	Source
Supreme Court Justice		
All federal offices except military reserve	I	Minn. Const. art. VI, § 6
Any office under the state	I	Minn. Const. art. VI, § 6
Town Supervisors (nonurban towns)		
School Board Member	C	Minn. Stat. § 367.033
Town Assessor for the same town	I	Minn. Stat. § 273.061 , subd. 1c
County Assessor for county where town is located	I	Minn. Stat. § 273.061 , subd. 1c

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