

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED In The
Office of the Court Clerk
APR 27

Case No. CV-2023-516

APR 27 2023
In the office of the
Court Clerk MARILYN WILLIAMS

Now on this 27th day of April, 2023 the Court denies Respondent's Motion to Dismiss Petition for Declaratory Judgment and grants Petitioner's Motion for Summary Judgment. In support thereof, the Court finds as follows:

Findings of Fact

1. Respondent was elected Ward 3 Norman City Councilmember on April 6, 2021, and his term will expire on July 5, 2023.¹
2. On January 9, 2023, Respondent was sworn in as Municipal Judge for the City of Wewoka, OK.²
3. Respondent was then advised by the City of Norman that he could not hold both offices and that doing so would violate the dual office holding prohibition outlined in 51 O.S. §6.³
4. Respondent refused to vacate either position.⁴
5. As a result, the City of Norman filed the instant Petition for Declaratory Judgment asking this Court to declare that:
 - A. Mr. Lynn cannot simultaneously hold the office of Ward 3 Norman City Councilmember and Municipal Judge for the City of Wewoka under the dual office holding prohibition of 51 O.S. § 6; and
 - B. When Mr. Lynn accepted and assumed the duties of Municipal Judge for Wewoka, he *ipso facto* vacated the office of Ward 3 Norman City Councilmember; and
 - C. The Ward 3 Norman City Council seat is now and has been vacant since January 9, 2023.⁵

¹ Combined Resp. to Motion to Dismiss and Motion for Summary Judgment, pg. 1, ¶ 3-5.

² *Id.* at pg. 2, ¶ 6.

³ *Id.* at pg. 2, ¶ 7.

⁴ *Id.* at pg. 2, ¶ 8.

⁵ Amended Petition, pg. 3.

Conclusions of Law

I. Title 51 O.S. §6(A)

Title 51 O.S. §6(A) states:

Except as may be otherwise provided, no person holding an office under the laws of the state and no deputy of any officer so holding any office shall, during the person's term of office, hold any other office or be the deputy of any officer holding any office, under the laws of the state. [...].

II. Whether Both Positions are Considered Offices

Petitioner argues that both the positions of Councilmember and Municipal Judge are “offices” within the meaning of 51 O.S. §6. The Oklahoma Attorney General’s Office has previously opined in 2006 OK AG 22 and in 1981 OK AG 42 that the position of Councilmember is an “office”. Likewise, Respondent’s position that Municipal Judge is an “office” for purposes of 51 O.S. §6 is supported by previous Attorney General opinions including 2018 OK AG 11, 2001 OK AG 34, 1985 OK AG 16, 1980 OK AG 7 and 1977 OK AG 179. Respondent does not specifically contest Petitioner’s assertions that both the positions of Councilmember and Municipal Judge are “offices” within the meaning of 51 O.S. §6(A), stating only that “the majority of the facts are not in dispute”.⁶ Therefore, the Court specifically finds that both the positions of Councilmember and Municipal Judge are “offices” within the meaning of 51 O.S. §6.

III. Whether Any Exceptions Apply

Because both the positions of Councilmember and Municipal Judge are “offices”, 51 O.S. §6 prohibits dual officeholding unless a specific exception applies.

⁶ Resp. Response to Motion for Summary Judgment, pg. 1, ¶ 2.

A. Article 7, Section 11(b) of the Oklahoma Constitution

Title 51 O.S. §6(A) states that its dual officeholding prohibition applies “[e]xcept as may be otherwise provided [...]”. Respondent argues that municipal judges are specifically exempted by the Oklahoma Constitution. Specifically, Article 7, Section 11(b) of the Oklahoma Constitution states:

No Justices or Judges, except those of Municipal Courts, shall engage in the practice of law nor hold any other office or position of profit under the United States or this State or any municipal corporation or political subdivision of this State, nor shall hold office in any political party.

In its brief, the City of Norman argues that Article 7, Section 11 is inapplicable to the controversy at bar because it governs judicial salaries, and states “Section 11(b) does not ‘take precedence’ over 51 O.S. §6, because it does not authorize something that the statute bans.”⁷ In support of its position, the City of Norman references Oklahoma Attorney General Opinions 1977 OK AG 179 and 1980 OK AG 7.

As held in *State ex rel. Dep’t of Transp. v. Opubco, Inc.*, 2002 OK CIV APP 72, ¶ 11; 50 P.3d 1146, 1148, while an Attorney General opinion construing a state statute is not controlling upon the court, it “is accorded great respect.” Therefore, it is worthwhile to take a closer look at these opinions.

In 1977 OK AG 179, the issue presented to the Attorney General was whether an individual could legally serve as a member of a municipal planning commission and at the same time also serve as an Associate Municipal Judge.⁸ The opinion cited 51 O.S. 6 and stated that “[t]he statute must be construed to be an absolute prohibition without regard to questions of the incompatibility

⁷ Combined Resp. to Motion to Dismiss and Motion for Summary Judgment, pg. 3, § II.

⁸ 1977 OK AG 179 at ¶1.

of such offices or possible conflicts of interest by reason of occupying such offices.”⁹ The Oklahoma Attorney General ultimately opined that because the legislature had not provided otherwise, the positions of Associate Municipal Judge and Municipal Planning Commissions Member are both "offices" and an individual would be prohibited from holding both positions simultaneously.¹⁰ Notably, the opinion did not suggest that Article VII, Section 11 of the Oklahoma Constitution was an exception to this prohibition.

The Oklahoma Attorney General had an opportunity to readdress some of the same issues just three years later in 1980 OK AG 7. The issue presented was whether a duly appointed and acting municipal judge of a city could also serve as a municipal judge of a court not of record for an incorporated town in the same county without violating the Oklahoma Constitution, Article II, Section 12, or any other Oklahoma law.¹¹ The Attorney General began by stating that “Title 51 O.S. 6 (1971), specifically addresses your question [...]”.¹² However, the opinion then addressed whether the Legislature intended to take the office of municipal judge out of the scope of the dual office holding provision.¹³ The opinion then reads:

We invite your attention to Article VII, Section 11 of the Oklahoma Constitution, which provides in part:

(b) No Justices or Judges, except those of Municipal Courts, shall engage in the practice of law nor hold any other office or position of profit under the United States or this State or any municipal corporation or political subdivision of this State, nor shall hold office in any political party.¹⁴

⁹ *Id.* at ¶3.

¹⁰ *Id.* at ¶9.

¹¹ 1980 OK AG 7, at ¶ 1.

¹² *Id.* at ¶ 2.

¹³ *Id.* at ¶ 4.

¹⁴ *Id.*

The Oklahoma Attorney General opined that “[a] clear reading of the above provision reveals intent to effectively exempt the position of municipal judges from the dual office prohibition.”¹⁵ Therefore, an individual may lawfully serve as municipal judge for more than one city simultaneously.¹⁶

However, the Attorney General cautioned that:

Cognizable of prior Attorney General's Opinions which address the issue of dual office holding relative to municipal judges, in no way must the opinion be construed as overruling those opinions wherein the positions in question involve a position other than a municipal judge.¹⁷

It is, therefore, the official opinion of the Attorney General that the Oklahoma Legislature has so provided that an individual may simultaneously serve as a municipal judge for more than one locale without violating any constitutional articles or laws proscribing dual office holding.¹⁸

Therefore, the Attorney General's Office has limited the application of Article VII, Section 11 of the Oklahoma Constitution solely to instances in which an individual serves as municipal judge for more than one locale. This Court finds the Attorney General's rational compelling and specifically finds that Article VII, Section 11 of the Oklahoma Constitution does not exempt the situation at bar from the dual office prohibitions outlined in 51 O.S. §6(A).

B. Title 51 O.S. §6 (A)(5)

Respondent next argues that 51 O.S. §6(A)(5) excepts the instant situation from its dual officeholding prohibition as the current positions held by Respondent do not conflict.¹⁹ Title 51 O.S. §6(A)(5) reads:

¹⁵ *Id.* at ¶5.

¹⁶ *Id.*

¹⁷ *Id.* at ¶7.

¹⁸ *Id.* at ¶8.

¹⁹ Respondent's Motion to Dismiss, pg. 4, ¶12.

5. Any person holding a county or municipal office or position, or membership on any public trust authority, who is a member of a board or commission that relates to federal, state, county or municipal government and is created by the United States government, the State of Oklahoma or a political subdivision of the state, except where the duties of the offices or positions conflict[.]

Admittedly, the Court had questions regarding this exception during oral argument. However, upon further review of the pleadings and applicable authority, the Court finds this argument to be without merit. The Court specifically relies upon the review of this statutory authority as interpreted by the Oklahoma Attorney General in 2006.

The question posed in 2006 OK AG 22 was whether a municipal police officer, who is a city council member of another city, qualifies for exemption from the dual office holding prohibition under 51 O.S. § 6(A)(5).²⁰ The Oklahoma Attorney General answered in the negative due to the fact that situation involved two municipal offices.²¹

A municipal police officer is an officer for dual office holding purposes. A member of a city council is not merely "related" to municipal government, but is a municipal office for dual office holding purposes too, and the exception does not apply. Thus, a municipal police officer who is also a city council member of another municipality does not qualify for exemption from the dual office holding prohibition under 51 O.S. Supp.2005, § 6(A)(5).²²

Similarly, in the case at bar, since both positions are considered "offices" they do not qualify for the exception outlined in 51 O.S. §6(A)(5).

Respondent further argues that *Town of Wellston v. Wallace*, 2007 OK CIV APP 2, 152 P.3d 284 provides authority for the Court to grant Respondent's Motion to Dismiss as long as the duties of Respondent do not conflict. However, the issue presented in the *Town of Wellston* was whether a board of town trustees could also serve as that town's planning commission and board of adjustment in a zoning matter. In dicta, the Court of Civil Appeals states that:

²⁰ 2006 OK AG 22, ¶10.

²¹ *Id.* at ¶19.

²² *Id.*

“[T]he proscription against dual office holding does not apply to municipal officers serving on a municipal board or commission “except where the duties of the offices or positions conflict.” 51 O.S.Supp.2004 § 6. While there might be no conflict in a board of trustees member serving as a planning commission member, there is a clear conflict in such an officer serving on the board of adjustment which hears appeals of decisions made by other municipal officers.”²³

Therefore, the Oklahoma Court of Civil Appeals in no way expanded the exception outlined in 51 O.S. §6(A)(5) to encompass the facts and issues before the Court.

Once again, because both of the positions held by Respondent are “offices”, the Oklahoma Attorney General has opined that 51 O.S. §6(A)(5) is inapplicable to the case at bar. The Court adopts this opinion and finds it is a reasonable and practical interpretation of the statute.

IV. Legal Ramifications of Dual Officeholding

The Oklahoma Supreme Court addressed the legal ramifications of dual officeholding in *Gibson v. Crowder*, 1946 OK 22, 196 Okla. 406, 406, 165 P.2d 628, 628, where it held:

If an office held by a person is properly classified as an office under the laws of this state, and thereafter the same person is regularly appointed or elected to another such office, which he fully accepts and enters into, the acceptance of the second office operates ipso facto to vacate the first office theretofore held, and the intention or purpose of the officer with reference to retaining the first office is immaterial. In such case the holding of the second office is valid and not in violation of the law prohibiting the holding of more than one office under the laws of the state.

Therefore, when Respondent was sworn in as Municipal Judge for the City of Wewoka, Oklahoma on January 9, 2023, he effectively vacated his office as Norman City Councilmember, and Ward 3 of the Norman City Council has been vacant since that date.

²³ *Town of Wellston v. Wallace*, 2007 OK CIV APP 2, ¶ 8, 152 P.3d 284, 286.

CONCLUSION

Because both Norman City Councilmember and Municipal Judge for the City of Wewoka are “offices” under the dual office holding prohibition of 51 O.S. § 6 and no exceptions thereto apply, Respondent vacated his City Councilmember seat upon assumption of the duties of Municipal Judge for the City of Wewoka on January 9, 2023, and Ward 3 of the Norman City Council has been vacant since that date.

IT IS HEREBY ORDERED!


LEAH EDWARDS
Judge of the District Court

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

CITY OF NORMAN, OKLAHOMA)
A MUNICIPAL CORPORATION,)
 Plaintiff,)
And)
)
KELLY LYNN,)
 Defendant

Case Number CV-2023-516

CERTIFICATE OF DELIVERY

I hereby certify that on the 27th day of April, 2023, by direction of the District Judge Leah Edwards, a true and correct file stamped copy of the Court's Order was mailed USPS Mail, to the following:

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