

Arts And Cultural Affairs Law §§ 57.07(1), 57.09; Session Laws 1919, CH 181; Session Laws 1933, CH 107

The position of town historian is compatible with member of the County Legislature.

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Richard C. Mitchell  
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Legislative Office Building  
46 East Bridge Street  
Oswego, New York 13126-2137

Informal Opinion  
No. 2012-6

Dear Mr. Mitchell:

You have requested an opinion relating to the compatibility of the positions of town historian and member of the County Legislature. This question arises because the County Legislature appoints the county historian, who provides guidance to the town historian. A member of the County Legislature currently also serves as historian for a town within the county. You are concerned that these positions may have a disqualifying supervisory relationship. As explained below, we are of the opinion that the relationship is not supervisory and therefore the positions are compatible.

A town historian must be appointed for each town by the town supervisor. Arts and Cultural Affairs Law § 57.07(1). The town historian is not compensated unless the town board provides for compensation. *Id.* The town historian's primary responsibilities are to collect and preserve material relating to the history of the town for which he is appointed. *Id.* § 57.09. The historian makes an annual report on the prior year's work to both the town supervisor and to the State Historian. *Id.* § 57.09.

A county historian may, but need not, be appointed by the County Legislature for each county outside New York City. Arts and Cultural Affairs Law § 57.07(1). Like the town historian, the county historian is not compensated unless the governing board provides otherwise. *Id.* The county historian reports annually to the County Legislature and to the State Historian. *Id.* § 57.09. A county historian has duties similar to those of town and other local historians, and in addition a county historian is to "supervise the activities of the local historians in towns and villages within the county in performing the historical work recommended" by the State Historian. Arts and Cultural Affairs Law § 57.09.

A fundamental principle of compatibility of office is that one person cannot serve as both supervisor and subordinate. See *People ex rel. Ryan v. Green*, 58 N.Y. 295, 305 (1874) ("The offices must subordinate, one the other, and they must, *per se*, have the

right to interfere, one with the other, before they are incompatible at common law."). This is true even when the supervision is not direct. In *Matter of Dupras v. County of Clinton*, 213 A.D.2d 952 (3d Dep't 1995), the court held that the positions of county legislator and senior clerk with the county board of elections were incompatible. "Here, the incompatibility is readily apparent since in her legislative capacity Perry will be in a position to vote upon the budget and personnel of the Board of Elections, as well as the salary of the commissioners who are her supervisors and who may remove her at their pleasure." 213 A.D.2d at 953. Similarly, the County Legislature supervises the county historian, and a member of the County Legislature could not also serve as county historian. The question is whether the county historian in turn supervises the town historian in such a way as to render the County Legislature the indirect supervisor of the town historian, and prevent a member of the County Legislature from simultaneously serving as town historian.

We are of the opinion that the relationship between the county historian and the town historian is not one of subordination that implicates this principle of incompatibility. First, the statutory structure of the relationship between the county historian and the town historian is not one of a supervisor and a subordinate. The county historian does not appoint the town historian or determine whether the position of town historian will be compensated; instead, these decisions, hallmarks of a supervisor-subordinate relationship, are made by town officials. As an appointee of the town supervisor, the town historian is subject to dismissal by the town supervisor, not the county historian. See *People ex rel. Corrigan v. City of Brooklyn*, 149 N.Y. 215, 223-24 (1896); *Waters v. City of Glen Cove*, 181 A.D.2d 783 (2d Dep't 1992). The town historian files his annual report with the town supervisor and the State Historian, not with the county historian. The town historian's responsibilities and duties remain the same, whether or not the county has its own historian. Thus, the town historian is not statutorily established as a subordinate of the county historian.

Second, the "supervision" that a county historian exercises with respect to a town historian does not subordinate the town historian to the county historian or, by extension, to the County Legislature, because the county historian -- where one exists -- provides guidance and assistance to the town historian and does not exercise the kind of authority or control that would implicate the principle of incompatible offices. State law originally mandated appointment of town historians in 1919, at a time when county historians had not yet been authorized. Act of April 11, 1919, ch. 181, 1919 N.Y. Laws 765, 766. At that time town historians received guidance from the State Historian, in the form of an annual letter "indicat[ing] to the local historians the general lines along which local history material is to be collected." Act of April 11, 1919, 1919 N.Y. Laws at 766. The Legislature added a provision authorizing the appointment of county historians in 1933, Act of March 31, 1933, ch. 107, 1933 N.Y. Laws 156, largely in order to provide additional guidance to local historians beyond the

annual letter from the State Historian. "It would be much better for the county if some competent local man or woman would outline their work and call them together occasionally for helpful conferences." Letter from Alexander C. Flick, State Historian, to Governor Hebert Lehman (March 23, 1933), *reprinted in* Bill Jacket for ch. 107 (1933), at 4. Thus, the statutory role of the county historian with respect to the town historian is not to exercise control over a subordinate but rather to provide guidance and educational resources -- a role that does not create the potential for conflict that is addressed by the principle of incompatible offices.

Indeed, the website of the State Education Department, the agency within which the State Historian is located, describes the supervisory responsibilities of the county historian as that "of providing guidance and support to municipal historians in their counties and of serving as a conduit of information between the State Historian in Albany and the local historians in their counties." <http://www.nysm.nysed.gov/services/historian/srvguidelines.html>. It elaborates, "County historians hold regular meeting [sic] for the local historians in their counties, sponsor in-service training sessions, monitor vacant jurisdictions, propose and carry out co-operative joint projects, and assist the work of their local historians wherever possible." *Id.* These descriptions of the role of the county historian with respect to municipal historians do not reflect a supervisor-subordinate relationship between the county and town historians.

We therefore conclude that the position of town historian is not subordinate to the county historian or, by extension, the County Legislature. Nor are we aware of any duties of town historian that would conflict with the duties of a member of the County Legislature. We thus are of the opinion that the positions of town historian and member of the County Legislature are compatible.

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD  
Assistant Solicitor General  
in Charge of Opinions