

Village Law §§ 3-300(3), 3-301(2)(a), 3-301(2)(b), 3-301(3), 4-400(1)(c)(i), 4-400(1)(c)(ii), 4-402, 4-408; State Finance Law §§ 99-a, 99-a(3); Public Officers Law § 9

The positions of village clerk/treasurer and village court clerk are incompatible.

April 3, 2014

Roger Monaco
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Village of Oxford
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Informal Opinion
No. 2014-1

Dear Mr. Monaco:

You have requested an opinion relating to the compatibility of the positions of village clerk/treasurer (“treasurer”) and village court clerk. You have explained that the Village is considering either combining the two positions or appointing one person to serve in both positions to allow greater oversight of the court clerk position by the village board of trustees. As explained below, we are of the opinion that the positions are incompatible and thus one person may not perform the duties of both.

In the absence of a constitutional or statutory prohibition against dual office-holding, one person may hold two offices simultaneously unless they are incompatible. Two offices are incompatible if their functions are inherently inconsistent, such as when one is subordinate to the other or one audits the accounts of the other. *See O'Malley v. Macejka*, 44 N.Y.2d 530, 535 (1978); *Matter of Ryan v. Green*, 58 N.Y. 295, 304-305 (1874). These principles apply to positions of public employment as well as to public offices. *See Matter of Dupras v. County of Clinton*, 213 A.D.2d 952 (3d Dep't 1995).

We are not aware of any constitutional or statutory prohibitions against holding the two positions at the same time. Village Law § 3-300(3), which prohibits one person from holding both an elective and an appointive village office, does not apply here; even assuming both positions are “offices”, *but see* Op. Att'y Gen. (Inf.) No. 97-48 (clerk of town justice court is not public officer), neither is an *elective* office. Village Law § 3-301(3). And neither position is subordinate to the other: the treasurer is responsible to the village mayor and board of trustees while the court clerk performs duties at the request of the village justice. *See* Village Law §§ 3-301(2)(a),(b),(3); 4-400(1)(c)(i),(ii); 4-402; 4-408.

However, the duties of the positions conflict. The court clerk, who provides clerical and administrative assistance to the village justices, accounts for one important source of Village funds, namely the fines, fees, forfeitures, and

surcharges collected by the court. The court clerk is responsible for transferring those collections to the village treasurer, and for filing a monthly report of court receipts with the State Comptroller. *See* State Finance Law § 99-a(3); Division of Local Gov't & School Accountability, New York State Office of the State Comptroller, Justice Court Fund: Handbook for Town and Village Justices and Court Clerks 12, 20 (2010) ("Handbook").

The treasurer has custody of the Village's money, keeps accounts of all receipts and expenditures, makes deposits in the name of the Village, pays out money from the village treasury as authorized by law, and files at the end of the fiscal year a statement showing in detail all revenues and expenditures during the previous fiscal year and outstanding indebtedness. Village Law § 4-408. When funds are received from the court clerk, the village treasurer accounts for and maintains the funds, as a liability against the Village, until the State Comptroller determines the proper distribution of the monies, as between the Village and the State and county. State Finance Law § 99-a; Handbook at 23. The village treasurer then pays to the State the moneys owed for the State's and county's shares and the Village's share can be recognized as revenue to the Village. Handbook at 23.

Because the court clerk transmits these funds to the Village, and the treasurer maintains the funds and transfers some portion of them to the county and State, the two officials serve as a fiscal check on each other and a safeguard for these funds. Having one person serve as both treasurer and court clerk would compromise this fiscal check. The duties of the positions therefore conflict and the positions are incompatible. One person may not perform the duties of both positions simultaneously, whether they are combined into one or the same person is appointed to both.

This same incompatibility of functions exists for the deputy treasurer, because that person performs the duties and exercises the powers of the treasurer in the treasurer's absence, *see* Public Officers Law § 9. Thus, the same reasoning prevents the deputy treasurer from also performing the duties of court clerk.

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