



City of Lowell - Law Department

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MEMORANDUM

TO: Eileen Donoghue, City Manager *EMD*

FROM: Christine P. O'Connor, City Solicitor

DATE: April 9, 2020

SUBJECT: **Motion Response – C. Mercier Req. Opinion relative to the City Council Create An Ordinance Or File A Home Rule Petition That Prevents A City Councilor From Holding Another Elective Office During Their Term**

I write in response to a request from C. Mercier that “the City Council enact an Ordinance or file a Home Rule petition that prevents a city councilor from holding another elective office during their term.”

Pursuant to the Massachusetts Constitution, the only prohibition in holding more than one elective office appears in the Massachusetts Constitution. This provision prohibits a person from holding a federal office and certain elected positions in the State.

“No ... person holding any office under the authority of the United States ... shall, at the same time, hold the office of governor, lieutenant governor, or councilor, or have a seat in the senate or house of representatives of this commonwealth; ... nor the attorney-general, solicitor-general, county attorney, clerk of any court, sheriff, treasurer and receiver-general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the Congress of the United States, and accepting that trust; but the acceptance of such trust by any of the officers aforesaid shall be deemed and taken to be a resignation of his said office; ...”

See MA. Const. Amend. Art. 8.

This language is silent as to a local elected official holding multiple elected positions, and therefore does not apply to such offices. See: *Wood v. Board of Election Com'rs of City of Cambridge*, 269 Mass. 67 (1929) (stating that constitutional amendment concerning plurality of office has no reference to city or town offices); see also *Op. Atty. Gen.* 1938, p. 99 (stating that this article against plurality of offices and incompatibility of offices have no reference to city or town officers.) The *Milne v. Hutchenreider* decision touches on this issue. In it, the Superior Court considered whether an individual elected to the Town Council could also serve as a Charter Commission member. The Barnstable Town Clerk refused to swear-in the individual to both positions. The

town's Charter, adopted in 1989, included a section concerning eligibility to be elected to town office:

Any voter shall be eligible to hold any elected town office provided that no person shall simultaneously hold more than one elected town office.

The Court concluded that the Charter Commission is not an "elected town office" and therefore that the prohibition did not apply in this case. Regardless of the holding, it is clear from this case that a community is permitted to preclude an individual from simultaneously holding more than one office.

Hutchenreider is also illustrative as to the method utilized in that case for prohibiting a local elected official holding multiple elected positions. Barnstable added the prohibition to their Charter by home rule petition.

While it is possible that other methods of adopting a similar prohibition may be used, this particular prohibition would, in the opinion of this office, require an amendment to our Charter. Massachusetts General Laws, c.43, §96, entitled "*City Council; Membership; Tenure*" provides that the nine members of the council be elected at large "for a term of two years," and "shall serve until their successors are qualified." If an individual was elected to the council and elected to another position, the proposed prohibition could not be enacted without conflicting with the Plan E Charter. Accordingly, in order to pursue this restriction, the City would need to file a Home Rule petition with the State Legislature.

Should the City Council wish to pursue such restrictions, attached is a Home Rule petition for your consideration.