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problem and states either, (1) That the publication of supplementary amendments to County Master Plans do not have to be published in their entirety, and that only a notice of hearing on same is required to be published, or (2) That it is necessary to publish in their entirety all supplementary amendments to County Master Plans, together with a notice of hearing on same."

A review of 1948 O. A. G., page 445, No. 72, reveals that such Opinion comes to a definite conclusion. The statement which you have quoted is quite specific in stating that a publication of a county zoning ordinance is not required. Acts of 1947, Ch. 174, Sec. 1, as found in Burns’ (1951 Repl. and 1963 Supp.), Sections 53-701 et seq. As stated in the above mentioned Attorney General’s Opinions, Acts of 1947, Ch. 174, Sec. 28, as found in Burns’ (1951 Repl.), Section 53-728, permits the publication, assuming a proper appropriation has been made therefor. There is not, however, any mandatory requirement that such ordinances be published.

A review of the statutes and decisions indicates no amendments to the statutes or new statutes relating to the point, nor is there any case law since the above Attorney General’s Opinion. Therefore, I find no compelling reason to change or modify the 1948 Opinion.

In conclusion therefore, it is my opinion (1) that publication of supplementary amendments to county master plans do not have to be published in their entirety, and that only a notice of hearing on the same is required to be published, and (2) that it is not necessary to publish in their entirety all supplementary amendments to county master plans.

OFFICIAL OPINION NO. 14

March 6, 1964

Hon. William Herring
State Representative
Linton, Indiana

Dear Representative Herring:

This is in response to your letter of February 21, 1964, wherein you request an Official Opinion.
Your specific questions are stated as follows:

"Is the office of city attorney, of a city of the fifth class, considered a lucrative office that would prevent him from holding another lucrative office under the State of Indiana?

"Is the office of county attorney considered a lucrative office that would prevent him from holding another lucrative office under the State of Indiana?"

In any question pertaining to the legal right of an individual simultaneously to hold more than one position under state government, the following points should be taken into consideration:

(1) Is each position a "lucrative office" within the meaning of the Indiana Constitution, Art. 2, Sec. 9?

(2) Is there a conflict of interests?

(3) Are the offices incompatible with each other?

(4) Would such holding be against public policy?

The Indiana Constitution, Art. 2, Sec. 9, provides as follows:

"No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted * * *" (Our emphasis)

To come within the constitutional prohibition against the holding of two lucrative offices, one must hold the title to an office wherein he is authorized to exercise some of the state's sovereignty and so is an officer rather than a mere employee. In addition, it is a necessary element of a "lucrative office" that there be compensation attached for services rendered.

A public office within the meaning of the Indiana Constitution, Art. 2, Sec. 9, supra, was defined in the case of Sheldine v. City of Elkhart (1920), 75 Ind. App. 493, 495, 129 N. E. 878, as follows:

"A public officer may be defined as a position to which a portion of the sovereignty of the state at-
taches for the time being, and which is exercised for the benefit of the public. The most important characteristic which may be said to distinguish an office from an employment is, that the duties of the incumbent of an office must involve an exercise of some portion of the sovereign power."

In the case of State ex rel. Black v. Burch (1948), 226 Ind. 445, 456, 80 N. E. (2d) 294, the court said:

"In performing their respective jobs none of these relators were vested with any of the functions pertaining to sovereignty. * * * An office is a public charge or employment, in which the duties are continuing, and prescribed by law and not by contract, invested with some of the functions pertinent to sovereignty * * *" (Our emphasis)

Let us first consider whether a city attorney, in a city of the fifth class, is the holder of a "lucrative office" "under this State" within the meaning of the Indiana Constitution, Art. 2, Sec. 9, supra. The Acts of 1933, Ch. 233, Sec. 8, as last amended in 1959, and found in Burns' (1963 Repl.), Section 48-1219, provides that in a city of the fifth class, the mayor shall appoint a city attorney. Burns' 48-1219, supra, also provides, in part, as follows:

"* * * In all cities of the fifth class the duties of the board of public works and the duties of the board of public safety, as now provided by law, shall be performed by a board to be known as the 'board of public works and safety,' which board shall be composed of the mayor, the city attorney and a member of the common council to be appointed by the mayor: Provided, That in lieu of the city attorney, the mayor may appoint another member of the common council as a member of such board. Such officers shall serve as members of such board without additional compensation therefor. * * *" (Our emphasis)

In the event that the city attorney is appointed a member of the board of public works and safety, under the author-
ity granted in Burns’ 48-1219, supra, his duties would involve an exercise of some portion of the sovereign power under the state. The board of public works and safety has immediate control of the police force, including its organization, operation and supervision to insure the public peace by the detection and suppression of crime under the laws of the state.

Burns’ (1963 Repl.), Sections 48-6101, 48-6107 and 48-6110;
State v. Reichert (1948), 226 Ind. 358, 80 N. E. (2d) 289, 291;
Hopewell v. State (1899), 22 Ind. App. 493;
20 I. L. E. Municipal Corporations § 121, Police Department, page 425.

Therefore, in answer to your first question, as to whether a city attorney, in a city of the fifth class, can be considered to be the holder of a lucrative office within the provisions of the Indiana Constitution, Art. 2, Sec. 9, supra, is in my opinion, dependent upon whether such attorney is appointed a member of the board of public works and safety. If he is so appointed, the acceptance of such appointment would make him the holder of a lucrative office under the constitutional prohibition. If he is not so appointed, then his status would be that of a person serving under a contract of employment, and, as such, his position would not come within the purview of the Indiana Constitution, Art. 2, Sec. 9, supra.

Let us now direct our attention to the position of county attorney. It will be remembered that there is a distinction in the application of our constitutional prohibition in that the Indiana Constitution, Art. 2, Sec. 9, supra, refers to a “lucrative office” and does not apply to one who is merely an employee. The position of county attorney involves a contract of employment between such an attorney and the board of county commissioners. The terms of such employment and the duties to be performed thereunder are governed by contract. Therefore, it is my opinion that a county attorney is not the holder of a lucrative office under the state within the meaning of the Indiana Constitution, Art. 2, Sec. 9, supra.

Therefore, if your questions are meant to encompass the two positions enumerated, namely, city attorney in a city of
the fifth class and county attorney, then inasmuch as a county attorney is an employee as distinguished from the holder of a "lucrative office," there would be no violation of the Indiana Constitution, Art. 2, Sec. 9, supra, by the simultaneous holding, by one individual, of the positions of city attorney and county attorney, and this regardless of whether said city attorney be appointed a member of the board of public works and safety.

Due to varying factual situations attendant upon a consideration of various positions, in any given instance, it is my opinion that the responsibility for a determination as to whether such employment or appointment would be against public policy, whether the duties of the two positions would be incompatible with each other, and whether there is a conflict of interests in such employment, rests with the appointing authority.

OFFICIAL OPINION NO. 15

March 10, 1964

Hon. William C. Christy
State Senator
7106 Grand Avenue
Hammond, Indiana

Dear Senator Christy:

This is in response to your request for my Official Opinion clarifying the purpose and effect of House Joint Resolution 22, passed by the Special Session of the 1963 General Assembly and filed in the office of the Secretary of State on April 20, 1963. This resolution proposes amendments to the Indiana Constitution, Art. 10, Sec. 1 and Art. 10, Sec. 8. Before such a change could become effective, it would be necessary, of course, for the proposal to be referred to the General Assembly, chosen at the next general election, and if such General Assembly should agree to such proposed amendments, then the same would be required to be submitted to the electors of the state for ratification as provided by the Indiana Constitution, Art. 16, Sec. 1. Therefore, it is stressed that this