



Commonwealth of Kentucky
Office of the Attorney General

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OAG 20-15

Subject: Whether service as a domestic relations commissioner is incompatible with the office of city commissioner.

Requested by: M. Seth Reeves
Domestic Relations Commissioner, 34th Judicial Circuit

Written by: Aaron J. Silletto
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Syllabus: The positions of domestic relations commissioner and city commissioner are neither functionally incompatible nor incompatible under Section 165 of the Constitution or KRS 61.080.

Opinion of the Attorney General

M. Seth Reeves currently serves as a domestic relations commissioner in the 34th Judicial Circuit, which is comprised of Whitley and McCreary Counties. Mr. Reeves also is a candidate in the 2020 election for city commissioner in the City of Corbin.¹ He requests this Office's opinion on whether, if he is elected as city commissioner, there would be a conflict that would prevent him from serving both in

¹ The City of Corbin has a city manager form of government under KRS 83A.150.

that office and as a domestic relations commissioner. For the reasons that follow, it is this Office's opinion that the two offices are not incompatible, and therefore, Mr. Reeves may serve concurrently as domestic relations commissioner and as city commissioner.

Section 165 of the Kentucky Constitution delineates the scope of constitutional incompatibility as follows:

No person shall, at the same time, be a State officer or a deputy officer or member of the General Assembly, and an officer of any county, city, town, or other municipality, or an employee thereof

Furthermore, the General Assembly has enacted KRS 61.080, which also makes certain offices incompatible. Specifically, KRS 61.080(1) provides:

No person shall, at the same time, be a state officer, a deputy state officer, or a member of the General Assembly, and an officer of any county, city, consolidated local government, or other municipality, or an employee thereof.

There appear to be no opinions of Kentucky's appellate courts, and no prior opinions of this Office, that consider whether a domestic relations commissioner is a state, county, or city office. Even so, there are cases and opinions discussing the constitutional and statutory incompatibility of other, similar positions. For example, the office of master commissioner is a creature of statute. KRS 31A.010; *see* CR 53.01 ("Each circuit court may appoint a master commissioner . . . as authorized by statute."). Relying upon *Shannon v. Ray*, 132 S.W.2d 545, 547 (Ky. 1939), this Office has previously opined that a master commissioner is not a state, county, or city officer, but rather, is a representative, assistant, and officer of the court that appoints him. *See* OAG 77-186, 81-108, 81-313, 82-7, 82-24. On the other hand, given its creation by the Judicial Article to the Kentucky Constitution, a trial commissioner of the District Court is considered a state officer. *See* Ky. Const. § 113(5) (providing for appointment of a trial commissioner in any county in which no district judge resides); KRS 24A.100; OAG 77-661, 80-16, 80-266, 81-108.

The similarities between master commissioners and domestic relations commissioners are instructive here. Formerly, proceedings before domestic relations commissioners were conducted under Rule 53 of the Kentucky Rules of Civil Procedure. *Eiland v. Ferrell*, 937 S.W.2d 713, 716 (Ky. 1997). The same rule governs proceedings before master commissioners. *See* CR 53.04–53.05. Now, the Supreme Court of Kentucky has adopted the Family Court Rules of Procedure and Practice, which include a rule on conducting proceedings before domestic relations

commissioners.² FCRPP 4. That rule provides for procedures very much like those applicable to proceedings before master commissioners. *Compare* CR 53.05 with FCRPP 4(3), (4). The powers of a master commissioner and a domestic relations commissioner also are similar. *Compare* CR 53.03 with FCRPP 4(1), (3). In addition, both master commissioners and domestic relations commissioners are compensated through fees charged to the parties to the actions in which they are involved. CR 53.06; FCRPP 4(6).³

Because of the similarities between the two offices, it is the opinion of this Office that, like a master commissioner, a domestic relations commissioner is not a state, county, or city officer, but instead is a representative, assistant, and officer of the court appointing him.⁴ Therefore, neither Section 165 of the Constitution nor KRS 61.080(1) makes the office of domestic relations commissioner incompatible with a city office, such as city commissioner.

However, our inquiry does not end with the constitutional or statutory text, as the lists of incompatible offices set forth in Section 165 and KRS 61.080 are not exhaustive. *LaGrange City Council v. Hall Bros. Co. of Oldham Cnty., Inc.*, 3 S.W.3d 765, 769 (Ky. App. 1999). In addition to constitutional and statutory restrictions, the common law also prohibits individuals from occupying “functionally incompatible” offices. *Id.* “The question is whether one office is subordinated to the other, or the performance of one interferes with the performance of the duties of the other, or whether the functions of the two are inherently inconsistent or repugnant, or whether the occupancy of both offices is detrimental to the public interest.” *Polley v. Fortenberry*, 105 S.W.2d 143, 145 (Ky. 1937) (quoting *Barkley v. Stockdell*, 66 S.W.2d 43, 44 (Ky. 1933)). To determine whether the office of domestic relations commissioner is functionally incompatible with the office of city commissioner, we must examine the functions of those offices.

A domestic relations commissioner is appointed by the circuit court in a county having no family court. FCRPP 4(1); *see* KRS 23A.120 and 24A.197 (abolishing

² The Family Court Rules “constitute a separate section of the Kentucky Rules of Civil Procedure.” FCRPP 1(2). The Rules of Civil Procedure still apply to family law actions to the extent they are not inconsistent with the Family Court Rules. FCRPP 1(5).

³ The Supreme Court has instructed that a master commissioner may serve concurrently as either a trial commissioner or a domestic relations commissioner. CR 53.01 (“A master commissioner . . . shall hold no other public office of the Court of Justice except a master commissioner . . . may also serve as a trial commissioner for the district court . . . or a domestic relations commissioner as approved by the Chief Justice.”); *see* OAG 81-108 (finding offices of master commissioner and trial commissioner not to be incompatible).

⁴ Unless agreed to by the parties, a master commissioner and domestic relations commissioner make only recommendations subject to review by the circuit court. *See* CR 53.05(2); FCRPP4(4). This further supports a conclusion that neither position is a state officer.

domestic relations commissioners in judicial circuits where a family court has been established). The duties of the domestic relations commissioner include presiding over domestic relations matters under KRS Chapter 403, except for domestic violence proceedings, contempt proceedings, and injunctive relief proceedings. FCRPP 4(1). A domestic relations commissioner hears all matters referred by the court and reports promptly to the circuit court. FCRPP 4(3). In addition, the commissioner may make recommendations to the judge, which are not effective except after review by the court. FCRPP 4(4).

A city commissioner is elected by the voters of the city he or she serves. KRS 83A.040(4). Under the city manager plan, the board of commissioners collectively exercises all legislative and executive power of the city. KRS 83A.150(3). However, despite having home rule powers under Section 156b of the Kentucky Constitution and KRS 82.082, cities do not have any authority in the field of domestic relations law. *See* KRS 82.082(2) (cities may not exercise any power or perform any function if there is “a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes”); *see also* Ky. Const. § 59(9), (10) (prohibiting local legislation regarding adoptions and divorces).

“Two (2) offices or positions are incompatible whenever . . . there are any potential conflicts of interest between the two (2), such as salary negotiations, supervision and control of duties, and obligations to the public to exercise independent judgment.” *LaGrange City Council*, 3 S.W.3d at 770. Here, a domestic relations commissioner does not look to a city’s board of commissioners for his or her appointment or salary. The commissioner works in a sphere of the law—domestic relations—over which the board of commissioners has no control. Because (a) neither the office of domestic relations commissioner nor the office of city commissioner is subordinated to the other, (b) the performance of one of the positions does not interfere with the performance of the other, and (c) the functions of the two are not inherently inconsistent or repugnant, the positions are not functionally incompatible. *See id.*; *Polley*, 105 S.W.2d at 145.

In summary, it is the opinion of this Office that the positions of domestic relations commissioner and city commissioner are neither functionally incompatible nor incompatible under Section 165 of the Constitution or KRS 61.080. Because the positions are not incompatible, a person serving as a domestic relations commissioner also may hold office as a city commissioner.

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