

TOWN LAW §§ 29(1), 34, 124; VILLAGE LAW § 4-408.

The positions of town comptroller and village treasurer are compatible. Recusal may be required under some circumstances.

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Informal Opinion
No. 97-53

Dear Mr. Brown:

You have asked whether a person may hold the positions of village treasurer and town comptroller. You have explained that four-fifths of the village is located within the town.

In the absence of a constitutional or statutory prohibition against dual officeholding, one person may hold two offices simultaneously unless they are incompatible. The leading case on compatibility of office is People ex rel. Ryan v Green, 58 NY 295 (1874). In that case the Court held that two offices are incompatible if one is subordinate to the other or if there is an inherent inconsistency between the two offices. The former can be characterized as "you cannot be your own boss", a status readily identifiable. The latter is not easily characterized, for one must analyze the duties of the two offices to ascertain whether there is an inconsistency. An obvious example is the inconsistency of holding both the office of auditor and the office of director of finance.

There are two subsidiary aspects of compatibility. One is that the principle equally covers an office and a position of employment or two positions of employment. Also, where positions are compatible, a conflict of interests may arise out of the simultaneous holding of the positions. The conflict can be avoided by declining to participate in the disposition of the particular matter.

Generally, the town comptroller has responsibility for auditing and allowing or rejecting charges or claims against the town or any improvement districts in the town. Town Law § 34. Also, the town board may authorize the comptroller to countersign all checks signed by the supervisor. Id. The comptroller annually audits the fiscal affairs of each improvement district

of the town. The comptroller also may be given the responsibility for keeping separate appropriation accounts and ensuring that these accounts are not overdrawn. Id. He must furnish the supervisor with information and data to allow the supervisor to exercise his duties as required by law. Id. We note that the supervisor remains the treasurer of the town even when the office of comptroller has been established. Id., §§ 29(1), 124.

The village treasurer is the chief fiscal officer of the village. Village Law § 4-408. Generally, the treasurer has custody of all village funds, 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. Id.

We see no incompatibility between these two positions. Each officer performs his responsibilities for a separate municipal corporation. In the event of a contract or other relationship between the town and village, creating a conflict between the duties of the two positions, recusal is an adequate remedy. See, Op Atty Gen (Inf) No. 92-37.

We conclude that the positions of town comptroller and village treasurer are compatible. Recusal may be required under some circumstances.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE
Assistant Attorney General
In Charge of Opinions