

99-081

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS) – (MULTIPLE OFFICES).**

**COUNTIES, CITIES AND TOWNS: CERTAIN LOCAL GOVERNMENT OFFICERS – PROHIBITION ON DUAL OFFICE HOLDING.**

**ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT CONFLICT.**

**Office of commissioner of revenue is not incompatible with commissioner's service as trustee for nonprofit hospital or as member of local transportation commission. Commissioner's first duty is to his office and proper performance of his duties. Such officeholding, without compensation, is not prohibited.**

The Honorable John P. Grzejka  
Commissioner of the Revenue for the City of Manassas  
April 12, 2000

You ask whether a commissioner of the revenue may serve on the board of trustees of a nonprofit hospital corporation and as a member of a local transportation commission. You relate that no compensation is received for serving in either of these positions. You also relate that the city council appoints the members of the transportation commission.

Article VII, § 4 of the Constitution of Virginia (1971) establishes the office of "commissioner of revenue." Article VII, § 6 contains the Constitution's restriction on the holding of multiple constitutional offices but is not applicable to the positions in issue. Specifically, "Article VII, § 6 ... prohibits the holding of more than one office mentioned in that article at the same time."<sup>1</sup> Thus, a constitutional officer is prohibited from simultaneously serving as a member of the governing body of the locality<sup>2</sup> or in another constitutional office of such locality.<sup>3</sup>

Section 15.2-1534(A) of the *Code of Virginia* contains the parallel statutory provision to Article VII, § 6, and prohibits the holding of dual offices by certain elected officials, including the office of the commissioner of the revenue. Section 15.2-1534(B) details exceptions to the prohibition, none of which addresses your inquiry. Additionally, other statutes may contain prohibitions of certain dual officeholdings; however, I am unaware of any such statutes relevant to the positions raised here.<sup>4</sup>

Absent any specific statutory or constitutional prohibition, the common law doctrine of compatibility of dual officeholding may preclude such officeholding if the two offices are inherently incompatible.<sup>5</sup> In my opinion, however, the office of commissioner of the revenue is not incompatible with serving as a trustee for a nonprofit hospital or as a member of a local transportation commission.<sup>6</sup> Of course, it is fundamental that the commissioner's first duty is to his office and the proper performance of his duties.<sup>7</sup> Accordingly, based on the limited facts presented, a commissioner of the revenue may also serve, without compensation, on the board of trustees of a nonprofit hospital corporation or as a member of a local transportation commission.<sup>8</sup>

<sup>1</sup>1984-1985 Op. Va. Att'y Gen. 244, 244; see also 1991 Op. Va. Att'y Gen. 4, 4.

<sup>2</sup>*Id.*

<sup>3</sup>Note, however, that a county commissioner of the revenue may serve "as appointed commissioner of the revenue of a town located in the county." Va. Code Ann. § 15.2-1534(B)(1).

<sup>4</sup>*E.g.*, § 22.1-63(B) (prohibiting "state officer" from holding office of division superintendent of schools); 1976-1977 Op. Va. Att'y Gen. 213 (concluding that, pursuant to § 22-35, predecessor statute to § 22.1-63, commissioner of revenue may not also be school superintendent).

<sup>5</sup>Op. Va. Att'y Gen.: 1995 at 42, 43; 1981-1982 at 299, 299.

<sup>6</sup>Indeed, Article VII, § 6 prohibits a member of a governing body from holding "any office filled by the governing body by election or appointment," except that such member may nevertheless be named to certain boards and commissions, and § 15.2-1535(B)(3) specifically permits a governing body member to be named to a transportation district commission.

<sup>7</sup>1971-1972 Op. Va. Att'y Gen. 73, 73.

<sup>8</sup>Note that the State and Local Government Conflict of Interests Act, §§ 2.1-639.1 to 2.1-639.24, is inapplicable because no personal interest in a contract or transaction is at issue. *Compare* § 2.1-639.2, which specifically provides that a "personal interest in a transaction shall not be deemed to exist where an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity," provided such member has no personal interest (i.e., a financial benefit or liability) related to the entity.