



DATE: February 7, 2023
TO: Honorable Mayor and Councilmembers
FROM: Kathryn L. Walker, City Attorney
RE: Dual Office Holding Prohibition

office memorandum

I was made aware that Councilmember Lynn had recently been sworn in at a municipal judge in Wewoka, Oklahoma. Upon learning this information, our office began doing research related to dual office holding. In an article dated Sunday, January 22, 2023, the Norman Transcript reported Councilmember Lynn was a municipal judge in Wewoka; a local attorney reached out to our office this week as well, asking whether Mr. Lynn is in violation of the dual office holding prohibition. I received a memo about an hour before the Council Conference on January 24, 2023 from Rick Knighton outlining the outcome of his research. It, along with cited authority, is attached to this memo.

51 O.S. § 6 states that “[e]xcept as may be otherwise provided, no person holding an office under the laws of the state and no deputy of any officer so holding any office shall, during the person’s term of office, hold any other office or be the deputy of any officer holding any office, under the laws of the state.” Oklahoma Attorney General Opinions have held that the position of city councilmember and the position of municipal judge are “offices” within the meaning of this statute, meaning one cannot be both a councilmember and a municipal judge at the same time. Violation of this prohibition is a criminal misdemeanor. In our research, we found a 1946 Oklahoma Supreme Court case (*Gibson v. Crowder*, 1946 OK 22) where the Court held that if an office held by a person is properly classified as an office under the laws of the state¹, and thereafter the same person is appointed or elected to another office under the laws of the state, which he fully accepts and enters into, the acceptance of the second office operates as a vacation of the first office.

Because of the serious implications of the *Gibson v. Crowder* case, I shared the attached memorandum as well as printed copies of the cases, statutes and Attorney General Opinions cited therein with Councilmember Lynn before the Council Conference on January 24, 2023. In a meeting with the City Manager and I, Mr. Lynn said he asked if he could do “legal work for another City” and was told it was okay. He did ask the City Manager several months ago if it would be a conflict of interest for him to do legal work for another City. Mr. Pyle later asked me, and I said he could represent another City provided the other city didn’t have interests in opposition to Norman. Mr. Pyle and I both understood “legal work for another City” to mean representing another City as a lawyer, not as a municipal judge. The position of City Attorney has not been determined to be an “office under the laws

¹ “[a]n office under the laws of the state” is identical to the language in the dual office holding prohibition in 51 O.S. §6.

of the state” such that it would raise the dual office prohibition issue. During our meeting on January 24, 2023, Mr. Lynn said he was shown a case prior to taking the position of municipal judge that held it would not violate the dual office holding prohibition to be a councilmember and a municipal judge. I said I would be happy to look at the case and asked that he provided the citation. Initially he said it was a 10th Circuit case (federal) but he later texted that it was an ethics opinion and he would get it for me to look at. He texted again that he believes municipal judges are no longer state offices, since they are no longer courts of record and that nullifies the outdated opinions. He stated he believed that occurred in 2018 or so.

After Mr. Lynn alleged there was either a case or an ethics opinion that impacted the dual office prohibition as it applies to municipal judges, we continued to research the issue.² On Thursday, January 26, I requested a call with John Dorman at the Spencer Fane law firm. We spoke later that afternoon and I requested that he and Andy Lester look at the dual office holding provision to determine whether one could simultaneously serve as a Councilmember and a Municipal Judge. Violating the dual office holding prohibition could implicate decisions Council makes and the determination of a quorum at Council meetings, so it was very important to me that this issue be given due consideration. At the same time, I do not relish playing a role in something that affects a councilmember’s ability to serve. Thus, it was critical to be thorough.

On February 2, 2023, I received the initial draft of the opinion from Spencer Fane. They recommended a couple of courses of action – place an item declaring the Ward 3 seat vacant on an upcoming meeting agenda or seek a declaratory judgment on this issue. I spoke briefly with Mayor Heikkila about it and intended to send this memo, along with our research and the Spencer Fane opinion to the full Council as soon as it was finalized.

On Friday, February 3, 2023, I received the final draft of the opinion from Spencer Fane (see attached). That afternoon, Mr. Lynn requested a meeting to discuss “resignation” with the City Manager and I. During that meeting, he presented a print out from the Oklahoma State Court Network (www.oscn.net) of Article 7, Section 11 of the Oklahoma Constitution which exempts municipal court judges from a constitutional prohibition against justices and district court judges from engaging in the practice of law or holding an office or position of profit under the United States or Oklahoma or any municipal corporation or political subdivision of Oklahoma. Mr. Lynn accused our office of failing to look at the Oklahoma Constitution and said he intended to file a bar complaint.

In the memo I provided to Mr. Lynn on January 24, 2023, it referenced a 1980 Attorney General opinion, which interpreted this very provision of the Oklahoma Constitution. The 1980 Attorney General Opinion, as well as other authority we cited, were attached to

² Although we did not find a 10th Circuit case on point, we did find two opinions from the Oklahoma Judicial Ethics Advisory Panel. One opinion, interpreting Canon 5A(2) of the Code of Judicial Conduct D, held that a municipal should resign the judicial position upon filing for election to a non-judicial opinion. 2000 OK JUD ETH 5. The other opinion interpreted 5 O.S. § Canon 4, Appendix 4 and 5 O.S. § Rule 4.5 and determining that an attorney is required to resign a municipal judge position prior to running for election to a non-judicial position. Although not germane to the issue of dual office holding, I advised Mr. Lynn at a later meeting of our findings.

the memorandum I provided to Mr. Lynn. The opinion from Spencer Fane also cited the constitutional provision. Because of Mr. Lynn's insistence that this provision applied regardless of other authority interpreting this provision, we asked outside counsel to provide additional analysis on this provision and the weight of Attorney General Opinions. I had intended to provide the updated opinion with this memorandum, but it is not available yet. You should be aware that KOCO communicated with Tiffany Vrska this morning indicating it had received an anonymous tip and a letter from the Asst. City Attorney to the City Attorney regarding a councilmember violating a statute related to dual office holding. I will forward the update to the memo from outside counsel as soon as I receive it, but I wanted to provide this information prior to it being broadcast on the news.

It should be noted that the Oklahoma Supreme Court said the following about the weight to be given Attorney General Opinions.

“In analyzing the weight to be given to the Attorney General's opinion, we note that, like opinions of the Court of Criminal Appeals and the Court of Appeals, the writings are considered as persuasive authority. Here, however, the Attorney General's analysis carries more weight in determining the issues before the Court. It does so because the Legislature has not acted since the opinion was promulgated. Undoubtedly, it did not do so because it understood that this Court considers the Legislature's silence as acquiescence or approval of the law as expounded in the Attorney General opinion.” *The B & F Corporation v. Cavers*, 519 P.3d 860 (2022) *citing Oklahoma Public Employees Association v. State ex rel. Oklahoma Office of Personnel Management*, 2011 OK 68.

Based on the Oklahoma Supreme Court's position on AG opinions, and considering that the Legislature has not changed the dual office prohibition to exempt municipal judges since the 1980 AG opinion, it is appropriate to both consider the AG opinions and rely on them in interpreting the constitutional provision at issue. We intend to file a petition for declaratory judgment this week but it may not be resolved for several weeks. Please let me know if you have any questions.