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Incompatible Municipal Offices in New York

Cover Page Footnote

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INCOMPATIBLE MUNICIPAL OFFICES IN NEW YORK

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TWO years ago New Yorkers followed the adventures of an Oswego schoolteacher named Vincent A. Corsall,¹ a science instructor in the local high school for ten years, who had been elected to the part-time office of city mayor. When he assumed the duties of mayor, Mr. Corsall was dismissed from his school assignment by the Oswego Board of Education. The Board based its action on an opinion of the Law Division of the State Education Department which stated that one person could not hold the two offices simultaneously, since they were "clearly incompatible under the principles of common law."² Subsequently the courts upset the Board's determination, ruling that the common law prohibition against the holding of incompatible public offices did not apply to the above situation, and the mayor went back to his classroom to teach.³

The *Corsall* case is an excellent illustration of the confusion existing in New York on the extent and application of the common law prohibition against the holding of incompatible offices.⁴ Under the common law, in the absence of a constitutional or statutory provision, a public officer could hold two offices at the same time if the offices were not incompatible.⁵ If the offices were incompatible, however, he could not

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1. Life, Jan. 20, 1958, p. 46.

2. Letter from John P. Jehu to Mark H. Fitzgibbons, Dec. 19, 1957.

3. *Corsall v. Gover*, 10 Misc. 2d 664, 174 N.Y.S.2d 62 (Sup. Ct. 1958). The rule was inapplicable because two offices were not involved, a school teacher not being "a public officer, but an employee of the Board." *People ex rel. Patterson v. Board of Educ.*, 269 App. Div. 39, 41, 54 N.Y.S.2d 80, 82 (4th Dep't 1945), modified, 295 N.Y. 313, 67 N.E.2d 372 (1946). See text accompanying notes 14 & 15 infra. Surprisingly, the State Education Department had recognized that Corsall was "an employee of the board of education," yet nevertheless deemed him subject to the rule. Letter from John P. Jehu to Mark H. Fitzgibbons, Dec. 19, 1957.

4. Aspects of this confusion were examined in Note, *Dual Office Holding and Conflicts in Appointive Powers*, 31 St. John's L. Rev. 254 (1957). The problem has received attention in five other states. See Conklin, *Plural Office Holding*, 28 Ore. L. Rev. 332 (1949); Note, 29 Calif. L. Rev. 535 (1941); Note, 23 Tenn. L. Rev. 903 (1955); Note, 1947 Wis. L. Rev. 687; Note, 29 B.U.L. Rev. 413 (1949).

5. *People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874); *Smith v. Dillon*, 267 App. Div. 39, 44 N.Y.S.2d 719 (3d Dep't 1943). See also Rhyne, *Municipal Law* 127 (1957); Throop, *Public Officers* § 30 (1892).

occupy them both,⁶ acceptance of the second generally being held to vacate ipso facto the first.⁷ The debatable question was: what constituted incompatibility?

New York courts had just begun to struggle with this problem when the legislature added to their definitional difficulties by enacting a series of unrelated statutes regulating dual office holding by various classes of public servants.⁸ In addition, state administrative agencies went far beyond decisional and statute law in finding various municipal offices incompatible.⁹ As a result, the New York lawyer or public servant seeking to learn whether two offices may be held simultaneously by one individual must cut through a tangled web of judicial holdings, legislative enactments and administrative pronouncements to obtain what is, in most instances, an equivocal answer.

The common law prohibition against the holding of incompatible offices can be brought into focus by defining its scope, limiting its application for the purposes of this article, and distinguishing it from other closely connected rules. The common law prohibition, first of all, extends to all public offices,¹⁰ while our particular problem concerns its application to the holding of two municipal offices. Thus, questions relating to the propriety of holding a municipal and a federal office,¹¹ a municipal and

6. *People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874). This rule is universally recognized. *Abbott*, *Municipal Corporations* 1542 (1906); 3 *Antieau*, *Municipal Corporation Law* 207 (1958); 1 *Dillon*, *Municipal Corporations* § 417 (5th ed. 1911); *Elliott*, *Municipal Corporations* 210 (3d ed. 1925); 3 *McQuillan*, *Municipal Corporations* 261 (3d ed. 1949); *Mechem*, *Public Offices and Officers* § 420 (1890); *Rhyne*, *op. cit. supra* note 5, at 126-27; *Throop*, *op. cit. supra* note 5, § 30; *Tiedman*, *Municipal Corporations* 132 (1894); *Willcock*, *Municipal Corporations* 240 (1827). See also *Annot.*, 1917A L.R.A. 216.

7. *People ex rel. Whiting v. Carrique*, 2 Hill 93 (N.Y. Sup. Ct. 1841); *People ex rel. Earwicker v. Dillon*, 38 App. Div. 539, 56 N.Y. Supp. 416 (2d Dep't 1899).

8. See, e.g., the statutes discussed in pt. II.

9. See, e.g., the opinions discussed in pt. III. The influence of these opinions cannot be over-emphasized. "While conventional doctrine in essence ranks such opinions as non-authoritative (as against judicial pronouncements) it can scarcely be gainsaid that official action is taken or withheld as a result of such opinions. Frequently, no court action ever follows to test the validity of the opinion. Somewhat the same deference is paid to what the attorney general 'finds the law' to be as is paid the court." *Krastin*, *The Lawyer in Society—A Value Analysis*, 8 W. Res. L. Rev. 409, 449 (1957). Indeed, there is some evidence that state administrative agencies believe their opinions are primary authority. In opinion No. 59-102, issued June 1, 1959, the comptroller stated that "Opinion No. 5925 reported in 8 Op. State Compt. 351 has been overruled by statute."

10. 3 *Antieau*, *op. cit. supra* note 6, at 207; 3 *McQuillan*, *op. cit. supra* note 6, at 261.

11. See, e.g., *People ex rel. Kelly v. Common Council*, 77 N.Y. 503 (1879); *Davenport v. Mayor*, 67 N.Y. 456 (1876); *Luce v. Beitner*, 239 App. Div. 23, 265 N.Y. Supp. 61 (4th Dep't 1933); *People ex rel. Ward v. Drake*, 43 App. Div. 325, 60 N.Y. Supp. 309 (4th Dep't 1899), *aff'd mem.*, 161 N.Y. 642, 57 N.E. 1122 (1900); *Kingston Associates, Inc. v. La Guardia*, 156 Misc. 116, 281 N.Y. Supp. 390 (Sup. Ct. 1935), *aff'd*, 246 App. Div. 803, 285 N.Y. Supp. 19 (1st Dep't 1936).

a state office,¹² or two state offices¹³ are omitted. Second, the prohibition comes into play only when two offices are involved.¹⁴ Hence, instances where one of two positions held by a public servant is not a municipal office are excluded.¹⁵ Third, no municipal officer may be appointed to another office over which he has the power of appointment.¹⁶ This rule is operative regardless of whether the two offices could otherwise be held by the same person, thereby rendering it unnecessary to reach the question of possible incompatibility on other grounds. Fourth, the common law prohibition should be distinguished from the conflicts of interest rules which prohibit many municipal officers from doing business with their governmental units.¹⁷ The assumption by an officer of a second municipal office has never been deemed a prohibited transaction within these rules, thus leaving such situations free for the application of incompatibility principles.¹⁸

Thus delimited, the problem can best be considered under the follow-

12. See, e.g., *People ex rel. Sherwood v. State Bd. Canvassers*, 129 N.Y. 360, 29 N.E. 345 (1891); *Hulbert v. Craig*, 124 Misc. 273, 207 N.Y. Supp. 710 (Sup. Ct.), *aff'd mem.*, 213 App. Div. 865, 209 N.Y. Supp. 850 (1st Dep't), *aff'd mem.*, 241 N.Y. 525, 150 N.E. 539 (1925).

13. See, e.g., *People ex rel. Sulzer v. Sohmer*, 211 N.Y. 565, 105 N.E. 647 (1914).

14. 35 Am. & Eng. Ann. Cas. 525 (1915). See also authorities cited note 6 *supra*.

15. *Corsall v. Gover*, 10 Misc. 2d 664, 174 N.Y.S.2d 62 (Sup. Ct. 1958). Most statutes apply only to dual office holding. See, e.g., *Gelson v. Berry*, 233 App. Div. 20, 250 N.Y. Supp. 577 (2d Dep't), *aff'd mem.*, 257 N.Y. 551, 178 N.E. 791 (1931); *People ex rel. Collins v. McAneny*, 144 N.Y. Supp. 121 (Sup. Ct. 1912); *Blum v. City of New York*, 61 Misc. 104, 112 N.Y. Supp. 1071 (Sup. Ct. 1908); *Munnally v. Board of Educ.*, 46 Misc. 477, 92 N.Y. Supp. 286 (Sup. Ct. 1905); *Padden v. City of New York*, 45 Misc. 517, 92 N.Y. Supp. 926 (Sup. Ct. 1904).

16. *Macrum v. Hawkins*, 261 N.Y. 193, 184 N.E. 817 (1933); *Wood v. Town of Whitehall*, 120 Misc. 124, 197 N.Y. Supp. 789 (Sup. Ct.), *aff'd*, 206 App. Div. 786, 201 N.Y. Supp. 959 (3d Dep't 1923). Cf. *People v. Thomas*, 33 Barb. 287 (N.Y. Sup. Ct. 1861).

17. See Kaplan and Lillich, *Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions*, 58 Colum. L. Rev. 157 (1958).

18. The reason for this is not merely that the courts were aware of the incompatibility doctrine which handled the situation, but also that the conflicts rules were intended to prohibit only private business dealings by certain officers with their municipalities. Thus no court has held that accepting a second municipal office is forbidden by these rules. Cf. *McAdam v. Mayor*, 36 Hun 340 (N.Y. Sup. Ct. 1885) (dual job holding decided under a statute prohibiting an interest in "work" as well as in contracts); *Fitch v. Mayor*, 40 Hun 512 (N.Y. Sup. Ct. 1886) (same). Recent administrative opinion following *Clarke v. Town of Russia*, 283 N.Y. 272, 28 N.E.2d 833 (1940), has held that the conflicts rules prohibit the taking of additional employment. 6 Ops. State Comp. 173 (1950). *Contra*, 2 Ops. Att'y Gen. 184 (1911); 30 State Dep't Rep. 360 (1923). *Quaere*: could this position have been caused by the fact that since the incompatibility rule does not apply to situations where one position is an employment, some standard was needed to check this area of dual job holding? Compare the appellate division opinion in *Clarke v. Town of Russia*, 257 App. Div. 703, 704, 15 N.Y.S.2d 415, 417 (3d Dep't 1939).

ing headings: (1) Common Law Incompatibility; (2) Statutory Prohibitions; and (3) Administrative Pronouncements.

I. COMMON LAW INCOMPATIBILITY

The earliest New York case defining the common law prohibition against the holding of incompatible offices was decided by the court of appeals in 1874.¹⁹ In *People ex rel. Ryan v. Green*,²⁰ James Ryan, deputy clerk of the Court of Special Sessions of the Peace of New York, sought a writ of mandamus to compel the city comptroller to pay his salary as clerk during the four months when he also served as state assemblyman. The comptroller had refused payment on the ground that Mr. Ryan had vacated the office of clerk by accepting that of assemblyman. The court of appeals, affirming lower court decisions issuing the mandamus,²¹ held:

Nor is the office of a member of assembly, in the legal sense of the word, incompatible with that of deputy clerk of the Court of Special Sessions of the city and county of New York. . . . It may be granted that it was physically impossible for the relator to be present in his seat in the assembly chamber, in the performance of his duty as a member of that body, and at the same time at his desk in the court doing his duty as deputy clerk thereof. But it is clearly shown in these opinions, that physical impossibility is not the incompatibility of the common law, which existing, one office is *ipso facto* vacated by accepting another. Incompatibility between two offices, is an inconsistency in the functions of the two; as judge and clerk of the same court—officer who presents his personal account subject to audit, and officer whose duty it is to audit it. . . . Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one toward the incumbent of the other. . . .

19. The first reported New York case involving the prohibition was *Howland v. Luce*, 16 Johns. R. 135 (N.Y. Sup. Ct. 1819), which contained the conclusory statement that there was nothing incompatible in the offices of school district clerk and collector of the district. *People ex rel. Whiting v. Carrique*, 2 Hill 93 (N.Y. Sup. Ct. 1841), established in New York the principle that the appointment of a person to a second office incompatible with the first is not absolutely void, but upon his subsequently accepting the second appointment and qualifying for the office the first position is *ipso facto* vacated, even though it be the superior of the two (citing Willcock, *op. cit. supra* note 6). Accord, *People ex rel. Martin v. Board of Police*, 35 Barb. 550 (N.Y. Sup. Ct. 1861); *People ex rel. Titus v. Board of Police*, 35 Barb. 535 (N.Y. Sup. Ct. 1861) (dissent), *rev'd*, 24 How. Pr. 611 (N.Y. 1863).

20. 58 N.Y. 295 (1874). Although this case does not involve the dual holding of two municipal offices, its thorough discussion of the common law rule and its position as the leading American case on incompatibility warrant its inclusion.

21. 46 How. Pr. 169 (N.Y. Sup. Ct. 1873), *aff'd*, 5 Daly 254 (N.Y.C.P. 1874).

The offices must subordinate one the other, and they must, *per se*, have the right to interfere, one with the other, before they are incompatible at common law.²²

In its opinion, which contains the only comprehensive analysis of the factors causing incompatibility in New York, the court of appeals adopted half of an alleged two-prong English approach to incompatibility,²³ rejecting that half which allowed physical impossibility to constitute incompatibility. This rejection, which had been strongly urged on the court,²⁴ was previously made equally clear in the special term's exhaustive opinion:

The principle is an old and well settled one that no person can hold incompatible offices. According to an early authority incompatibility as to office is divided into two classes. 'Offices are said to be incompatible and inconsistent so as to be executed by the same person, first, when from the multiplicity of business in them, they cannot be executed with care and ability; or, second, when, their being subordinate and interfering with each other, it induces a presumption that they cannot be executed with impartiality and honesty.' . . . Among the multitude of cases reported containing adjudications as to what constitutes incompatibility in offices, illustrations are found of the latter class, and none whatever in the former . . . It will be perceived that in all the cases reviewed the offices declared incompatible are such as bear a special relation to each other; one being subordinate to and interfering with the other so as, in the language of COKE, to induce the presumption that they cannot be executed with impartiality and honesty. And there are no cases of adjudged incompatibility involving any other principle.²⁵

The *Green* case, then, represents a clear-cut rejection of the physical impossibility concept in New York²⁶ and an adoption of a practical

22. 58 N.Y. at 304-05.

23. The earliest English case hinting at the doctrine of incompatibility was *Dyer's case*, 2 Dyer 159a, 73 Eng. Rep. 344 (K.B. 1558). Subsequent cases held that the acceptance of an incompatible office vacated the initial office, regardless of the relative importance of the two. *Milwood v. Thatcher*, 2 T.R. 82, 100 Eng. Rep. 45 (K.B. 1787); *Rex v. Trelawney*, 3 Burr. 1616, 97 Eng. Rep. 1010 (K.B. 1765). These decisions were cited in *People ex rel. Whiting v. Carrique*, 2 Hill 93 (N.Y. Sup. Ct. 1841). Coke and Blackstone give instances of incompatible offices, but neither attempts to formulate a general definition. 4 Coke, *Institutes** 99-100; 1 Blackstone, *Commentaries** 175-76, 344, 348, 353.

24. "The inconvenience to the public which may arise from the holding of two offices by one person—the likelihood of neglect of the duties of either office, or of both—the certainty that the duties of both offices cannot always be performed by the same person at one and the same time—these embarrassments do not constitute incompatibility.

"These may be good reasons for removing the incumbent from one of the two offices. But in order to produce 'incompatibility' there must be some inherent conflict and antagonism between the duties of both offices, which render it necessary that each set of duties should have a separate officer to perform them. For instance, where one officer is in the relation of master over the other—or bound to supervise and judicially examine the conduct of the other.

"The incompatibility must be between the functions of the two offices." Brief for Respondent, p. 12, *People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874).

25. 46 How. Pr. at 170, 173-74.

26. No case in the past seventy-five years has modified this stand. Two lower court

conflict of duties approach under which offices are found incompatible when there is some inconsistency in their functions, and when each office has, per se, the right to interfere with the other.²⁷ Such an approach provides no inflexible rule, no legal yardstick by which incompatibility can be measured. Throop reached this conclusion in 1892 when he observed that:

The question, whether two offices are or are not incompatible, is often difficult of solution, and the principles upon which its solution depends, cannot always be stated with perfect exactness . . . [I]n many instances each case must be judged by its own peculiar circumstances.²⁸

In addition to its exposition of those factors creating incompatibility, the *Green* case is noteworthy for its reaffirmation in New York of the rule that acceptance of the incompatible office vacates the prior office,²⁹ and for its implied acknowledgment that offices may be incompatible even if held under different governmental units.³⁰ On the latter point, most common law cases do involve two offices under the same municipality,³¹ but this is because it is in precisely such situations that incompatibility is most likely to exist.³²

Judicial holdings since *Green* have cited and relied on its interpre-

cases, however, seem to contain contrary dicta on whether the neglect of duty resulting from the occupancy of two offices may render them incompatible. Compare *People ex rel. Russell v. Board of Fire Comm'rs*, 76 Hun 146, 150, 27 N.Y. Supp. 548, 551 (Sup. Ct. 1894), with *Kingston Associates, Inc. v. La Guardia*, 156 Misc. 116, 127, 281 N.Y. Supp. 390, 404 (Sup. Ct. 1935), aff'd, 246 App. Div. 803, 285 N.Y. Supp. 19 (1st Dep't 1936). New York's position has been followed by almost all the states. 3 McQuillan, op. cit. supra note 6, at 265; Conklin, supra note 4, at 354; Annot., 1917A L.R.A. 216. All the above authorities cite the *Green* case. Contra, Rhyne, op. cit. supra note 5, at 127; 3 Antieau, op. cit. supra note 6, at 207.

27. This is the general rule elsewhere. "The true test is whether the two offices are incompatible in their natures, in the rights, duties or obligations connected with or flowing from them." 3 McQuillan, op. cit. supra note 6, at 265. "There must . . . be some inconsistency in the functions of the offices; some conflict in the duties required of the officer; as where one has supervision of the other, or is required to deal with, control or assist the other." Elliott, op. cit. supra note 6, at 211 (citing the *Green* case).

28. Throop, op. cit. supra note 5, § 33.

29. The election or appointment to an incompatible office does not in itself cause a vacancy in the first office. Id. § 31. See also cases cited notes 7 and 19 supra.

30. Contra, Elliott, op. cit. supra note 6, at 211: "The common-law rule assumes that the offices are derived from a common source." See also Annot., 100 A.L.R. 1183 (1936): "Another exception to the general rule is found where the two offices are held under different sovereignties."

31. See, e.g., *People ex rel. Earwicker v. Dillon*, 38 App. Div. 539, 56 N.Y. Supp. 416 (2d Dep't 1899).

32. Statutory exceptions sometimes expressly permit the holding of offices in two municipalities, thereby constituting strong evidence that the legislature believed the incompatibility doctrine otherwise would apply to them. See, e.g., N.Y. Village Law § 42.

tation of the common law prohibition.³³ The courts carefully set out the functions and duties of both offices to see whether there is a per se conflict between the two. This process, followed by the *Corsall* court,³⁴ results in cases of restricted precedent value, but it remains the only feasible approach to the problem in view of the limitless possible combinations of dual municipal office holding. A recent notewriter, echoing Throop's observations, has concluded that:

It has not been found feasible to construct a sufficiently broad and comprehensive definition of the term 'incompatible' to cover all possible situations that may arise. Courts have generally contented themselves with the application of certain criteria to individual fact patterns. . . . Ultimately, the determination of the existence or non-existence of incompatibility between any two public offices must await the arrival of specific cases viewed against the background of then prevailing conditions.³⁵

The necessity of waiting for specific judicial decisions has been obviated in the case of many municipal officers, however, by the enactment of a complex maze of statutes prohibiting certain areas of dual office holding. These statutes, and their effect upon a prohibited dual office holding situation, give rise to certain unique problems.

II. STATUTORY PROHIBITIONS

While many municipal officers are still covered only by the common law incompatibility prohibition, therefore lending the above discussion of the common law rule substantial practical value, a majority of municipal officers today are subject to one or more statutory prohibitions. It has been said that many such provisions "are merely declaratory of the common law,"³⁶ but this unhappy generalization requires substantial qualification.

A few legislative enactments, it is true, closely parallel the common law in that they prohibit the same type of dual office holding situations as would the common law.³⁷ But most statutes go much further than the common law in condemning dual office holding,³⁸ although occasionally provisions are found attempting to abrogate the latter's appli-

33. See, e.g., *Smith v. Dillon*, 267 App. Div. 39, 44 N.Y.S.2d 719 (3d Dep't 1943); *People ex rel. Earwicker v. Dillon*, 38 App. Div. 539, 56 N.Y. Supp. 416 (2d Dep't 1899); *Corsall v. Gover*, 10 Misc. 2d 664, 174 N.Y.S.2d 62 (Sup. Ct. 1958); *People v. Irwin*, 166 Misc. 492, 2 N.Y.S.2d 686 (Sup. Ct. 1938) (dictum).

34. 10 Misc. 2d 664, 174 N.Y.S.2d 62 (Sup. Ct. 1958). The court then decided the case on another point. See note 3 supra.

35. Note, *Dual Office Holding and Conflicts in Appointive Powers*, 31 St. John's L. Rev. 254, 256 (1957).

36. 35 Am. & Eng. Ann. Cas. 525, 529 (1915).

37. See, e.g., that portion of N.Y. Town Law § 20(4) forbidding a town board member from becoming town comptroller.

38. See, e.g., N.Y. Second Class Cities Law § 19.

cation to a certain class of municipal officers.³⁹ All these statutes, however, contain absolute prohibitions against particular incumbents holding certain other offices, rather than codifying the common law criteria for determining whether offices are incompatible.⁴⁰ Consequently, when considering dual office holding prohibited by statute, the term "prohibited" office is more appropriate than the common law designation of "incompatible," since the offices cannot both be held by one person at the same time whether or not there be a conflict of duties.⁴¹

Various statutes prohibiting dual office holding fall into four broad classifications. One type may prohibit the holding of a second office and provide that if such an event occurs the first office is vacated.⁴² The second may prohibit the holding of a second office but make no provision for such an occurrence.⁴³ While one authority states the rule in such cases to be that a prohibited "office cannot be accepted (i.e., the first office is retained while the second office remains vacant)," ⁴⁴ New York's position seems to be that the officer may assume the second office if he first resigns his previous one.⁴⁵ A third type of prohibitory statute may specify that certain municipal officers are not "eligible to"⁴⁶ or "eligible to hold"⁴⁷ other particular offices. Under the former provision, an officer is deemed not only incapable of holding the second office, but also of being elected or appointed to it.⁴⁸ Under the latter, the officer,

39. See, e.g., N.Y. Village Law § 42. The State Comptroller has taken the position that "this section would not permit one person to hold two offices inherently incompatible." 11 Ops. State Comp. 710 (1955). Why, then, one may inquire, was it enacted?

40. While no statute codifies the substance of the common law prohibition, some do codify its effect. Thus, under New York City Charter § 895, the acceptance of a second prohibited office vacates the first.

41. Mechem and Conklin employ the word "forbidden" instead of "prohibited." Mechem *op. cit. supra* note 6, § 419; Conklin, *supra* note 4, at 347.

42. See, e.g., N.Y. Second Class Cities Law § 19.

43. See, e.g., N.Y. Village Law § 42.

44. Conklin, *supra* note 4, at 346. *Contra*, Rhyne, *op. cit. supra* note 5, at 128.

45. *People ex rel. Miller v. Mynderse*, 140 App. Div. 789, 126 N.Y. Supp. 198 (3d Dep't 1910), *aff'd mem.*, 201 N.Y. 524, 94 N.E. 1098 (1911). *Quaere*: what happens if the officer does not resign his first office? The Mynderse court states equivocally that this "probably *ipso facto* vacates the position formerly held by him, or prevents him from legally qualifying for the new position until he has abandoned the old." 140 App. Div. at 791, 126 N.Y. Supp. at 199. (*Italics omitted.*)

46. See, e.g., N.Y. Town Law § 23.

47. See, e.g., N.Y. Town Law § 20(4).

48. *People v. Purdy*, 154 N.Y. 439, 48 N.E. 821 (1897). A subsequent statute had the effect of reversing the precise holding of this case, *Cole v. Wilson*, 202 Misc. 1090, 115 N.Y.S.2d 751 (Sup. Ct. 1952), but the general principle may still be good law in New York. *Annot.*, 5 A.L.R. 117 (1920); Mechem, *op. cit. supra* note 6, § 428; *Note*, *Dual Nomination for Incompatible Offices*, 16 Albany L. Rev. 242, 244 (1952). *Cf. Clancy v. Sloan*, 273 N.Y. 152, 7 N.E.2d 24 (1937).

as in the second type of statute outlined above, may assume the other office after he has resigned the first.⁴⁹ Finally, a statute may provide that certain officers shall not be eligible during their term of office to hold other specific offices.⁵⁰ Here the ineligibility extends to the entire term of office and is non-curable despite the resignation of the first office before election or appointment to the second.⁵¹

The emphasis in our introductory discussion has been on the application of various laws to the assumption by those officers included within their statutory scope of other offices. Many times, however, a municipal officer to whom no statutory prohibition attaches may assume an office which itself is subject to a statute precluding its occupant from holding certain other offices, including that which the official first held. In such a situation, there is nothing to prevent the officer from taking the second office, but by so doing he brings himself within the scope of the statutory prohibition and is thus deemed to have relinquished his initial position.⁵² The effect here is similar to what occurred at common law when an officer accepted an incompatible office. Bearing this in mind, then, an analysis of the pertinent statutes is in order.

Villages. A myriad of statutes confronts the village officer, starting with section 43 of the Village Law,⁵³ which contains a broad statutory exception to the common law prohibition, namely, that "no person shall be disqualified from holding office in a village by reason of the fact that he or she holds any other public office." Section 43 is supplemented by section 42 of the New York Village Law⁵⁴ which provides that "no person shall be disqualified from holding a village office by reason of holding a town or county office." Thus, village officers are exempt from statutory regulation of dual office holding if the second office is a non-village office, at least where the second office is not itself subject to some statutory prohibition.

When the second office is a village office, the officer should be aware

49. *Clancy v. Sloan*, 273 N.Y. 152, 7 N.E.2d 24 (1937). Cf. *People ex rel. Furman v. Clute*, 50 N.Y. 451 (1872), modified, 52 N.Y. 576 (1873).

50. See, e.g., N.Y. Gen. City Law § 3.

51. *Forman v. Bostwick*, 139 App. Div. 333, 123 N.Y. Supp. 1048 (3d Dep't 1910).

52. See, e.g., *People ex rel. Henry v. Nostrand*, 46 N.Y. 375 (1871); *Matter of Gilroy*, 11 App. Div. 65, 42 N.Y. Supp. 640 (2d Dep't 1896).

53. N.Y. Sess. Laws 1909, ch. 64, § 43, as amended. This provision was added by N.Y. Sess. Laws 1927, ch. 27, § 1.

54. N.Y. Sess. Laws 1909, ch. 64, § 42, as amended. The present law dates from the 1927 amendment, N.Y. Sess. Laws 1927, ch. 650, § 3. An earlier law had provided, with several exceptions, that no one could hold two village offices at the same time. N.Y. Sess. Laws 1897, ch. 414, § 42, as amended, N.Y. Sess. Laws 1906, ch. 452, § 1. Evidently the old law made it difficult to fill all village offices with capable men, for the 1927 amendments in force today are considerably more liberal in permitting dual office holding.

of that part of section 42 which forbids the simultaneous holding by one person of an elective and an appointive office, with the exception that not more than two members of the board of trustees may be members of any separate board or commission. Holding two elective or two appointive offices is not forbidden. This type of statutory prohibition comes under the second classification discussed above, and the courts have construed its predecessor as condemning only the actual holding of two prohibited offices, thereby allowing the officer to assume the second office upon his resignation of the first.⁵⁵

Membership on the village zoning board of appeals gives rise to a limited prohibition, with section 179-b of the Village Law providing that village trustees shall not be eligible for the board. Section 179-f, however, permits all other village officials to serve on the board without fear of losing their former offices.

Cities. Prohibitions against dual office holding in cities may be found in section 3 of the General City Law,⁵⁶ section 19 of the Second Class Cities Law,⁵⁷ and in many city charter provisions.⁵⁸

Section 3 of the General City Law provides that a member of the common council, during the period for which he was elected, shall be incapable of holding under the appointment or election of the common council any office for which the emoluments are paid from the city treasury or by fees or compensation under an act or ordinance of the common council. This statute does not preclude a councilman from holding a non-paying city office, nor does it constrain other city officers from holding another paying or non-paying city office.⁵⁹

Section 3 falls under the last classification discussed above since here a councilman is absolutely forbidden during his term of office to take certain other city offices. Thus, in *Forman v. Bostwick*,⁶⁰ where an Ithaca alderman resigned his office and became city judge, the court held that his appointment was illegal, notwithstanding his resignation as councilman. The term of the first office, and not its actual occupancy, is the determining factor.

55. See note 45 *supra* and accompanying text.

56. Originally enacted by N.Y. Sess. Laws 1899, ch. 237, § 28, which was slightly revised in N.Y. Sess. Laws 1900, ch. 327, § 3, and re-enacted by N.Y. Sess. Laws 1909 ch. 26, § 3, as amended. The statute in force today is almost identical with the 1899 law.

57. N.Y. Sess. Laws 1906, ch. 473, § 1, as amended, N.Y. Sess. Laws 1909, ch. 55, § 19, as amended, N.Y. Sess. Laws 1916, ch. 380, § 1.

58. See, e.g., N.Y. City Charter § 895.

59. Section 27 of the General City Law has a unique exception affecting members of city planning boards. It provides that not more than a minority of board members may hold other city offices, thus prohibiting only multiple dual office holding. In addition, section 27 now provides that members of the city's legislative body and planning board are not "eligible for membership on the board of appeals of such city."

60. 139 App. Div. 333, 123 N.Y. Supp. 1048 (3d Dep't 1910).

Section 19 of the Second Class Cities Law embodies an extremely broad prohibition which bars any person in a second class city from holding more than one city office at the same time. A city officer may, nonetheless, accept a second office in violation of the statute, but in so doing the first office is vacated.⁶¹

Numerous special city charters and other laws supplement, and sometimes replace, the above general statutes.⁶² Typical of these is section 895 of the New York City Charter which, with its predecessors, has caused more litigation than any other statute in this area of municipal law.⁶³ With few exceptions,⁶⁴ it prevents any city officer from holding another public office and provides that the acceptance of such an office vacates the officer's first position. With regard to the latter consequence, the charter provision is similar to section 19 of the Second Class Cities Law and falls under the first statutory type described above.

Towns. Section 20(4) of the Town Law⁶⁵ stipulates that "no person shall be eligible to hold more than one elective town office." This is a type three prohibitory statute, referring to the time the elected officer takes office, and not to the time of his election.⁶⁶ The holding of two appointive town offices, an elective and an appointive town office, or a town and a non-town office⁶⁷ is not regulated by statute. Section 20(4) also contains a provision forbidding a town board member from becoming town comptroller.

61. *People v. Harris*, 294 N.Y. 424, 63 N.E.2d 17 (1945).

62. Kaplan and Lillich, *supra* note 17, at 170 n.75; Letter from the Attorney General to Hon. Maurice J. Fleischman, May 27, 1958. See also notes 75 and 83 *infra* and accompanying text.

63. See note 15 *supra*. Other cases have failed to apply the charter for various reasons. *Merzbach v. Mayor*, 163 N.Y. 16, 57 N.E. 96 (1900) (statutory exception); *People ex rel. Gilchrist v. Murray*, 73 N.Y. 535 (1878) (office of assistant clerk not a city office); *Childs v. Moses*, 265 App. Div. 353, 38 N.Y.S.2d 704 (1st Dep't 1942), *aff'd mem.*, 290 N.Y. 828, 50 N.E.2d 235 (1943) (statutory exception); *People v. Irwin*, 166 Misc. 492, 2 N.Y.S.2d 686 (Sup. Ct. 1938) (only one public office involved); *Kingston Associates, Inc. v. La Guardia*, 156 Misc. 116, 281 N.Y. Supp. 390 (Sup. Ct. 1935), *aff'd*, 246 App. Div. 803, 285 N.Y. Supp. 19 (1st Dep't 1936) (only one public office involved); *Goettman v. Mayor*, 6 Hun 132 (N.Y. Sup. Ct. 1875) (office not a city office). Many cases involve the vacation of the first office by the acceptance of a second. See, e.g., *Metzger v. Swift*, 258 N.Y. 440, 180 N.E. 112 (1932); *Davenport v. Mayor*, 67 N.Y. 456 (1876); *Schieffelin v. Enright*, 200 App. Div. 312, 192 N.Y. Supp. 729 (1st Dep't 1922); *People v. Kupferman*, 175 Misc. 650, 24 N.Y.S.2d 445 (Sup. Ct. 1941); *Hulbert v. Craig*, 124 Misc. 273, 207 N.Y. Supp. 710 (Sup. Ct.), *aff'd mem.*, 213 App. Div. 865, 209 N.Y. Supp. 850 (1st Dep't), *aff'd mem.*, 241 N.Y. 525, 150 N.E. 539 (1925).

64. Found in § 895 itself and in N.Y. City Charter § 531(b).

65. N.Y. Sess. Laws 1932, ch. 634, § 20(4), as amended, N.Y. Sess. Laws 1933, ch. 751, § 3. The 1932 act did not limit the prohibition to elective officers.

66. *Clancy v. Sloan*, 273 N.Y. 152, 7 N.E.2d 24 (1937).

67. Compare N.Y. County Law § 411 with N.Y. Village Law § 42.

Section 23 of the Town Law⁶⁸ provides that no county treasurer, district superintendent of schools, or school district trustee "shall be eligible to" the office of supervisor. An 1890 predecessor of this section⁶⁹ was construed to apply to the capacity of a candidate for election as well as to the holding of office, rendering a school district trustee incapable of being elected town supervisor even when he resigned his office as trustee after having been elected supervisor.⁷⁰ However, a later provision in the Education Law,⁷¹ stating that "a trustee or a member of a board of education vacates his office by the acceptance of either the office of district superintendent or of supervisor," was held to modify section 23 of the Town Law to the extent of permitting a school district trustee to assume the office of supervisor upon his resignation as trustee.⁷²

Two additional statutory provisions are found in the Town Law. Section 42 permits a town officer to be appointed deputy supervisor, and section 267(1) provides that no town board member shall be eligible to sit on the zoning board of appeals.

Counties. Section 411 of the County Law⁷³ provides that specified county officers⁷⁴ and all elective county officers shall be ineligible to hold at the same time any other elective county or town office, or that of city supervisor.⁷⁵ These officers are not prohibited from holding appointive county or town offices or an office under other municipalities, save the office of city supervisor. Nor are appointive county officers forbidden to hold other offices.⁷⁶ In a unique decision, the court of appeals has read section 411 as precluding any person from running for two elective offices falling within the statute's prohibition.⁷⁷

68. N.Y. Sess. Laws 1932, ch. 634, § 23, as amended, N.Y. Sess. Laws 1933, ch. 751, § 5, as repealed and added by N.Y. Sess. Laws 1949, ch. 682, § 1.

69. N.Y. Sess. Laws 1890, ch. 569, § 50.

70. *People v. Purdy*, 154 N.Y. 439, 48 N.E. 821 (1897). See also *Matter of Smith*, 49 Misc. 567, 100 N.Y. Supp. 179 (Sup. Ct.), *aff'd*, 116 App. Div. 665, 101 N.Y. Supp. 992 (4th Dep't 1906), *aff'd mem.*, 188 N.Y. 549, 81 N.E. 1176 (1907).

71. N.Y. Sess. Laws 1909, ch. 16, § 149; Now N.Y. Educ. Law § 2112(3).

72. *People ex rel. Martin v. Kenyon*, 152 App. Div. 898, 136 N.Y. Supp. 525 (4th Dep't 1912), *aff'd mem.*, 207 N.Y. 692, 101 N.E. 1117 (1913). Accord, *Cole v. Wilson*, 202 Misc. 1090, 115 N.Y.S.2d 751 (Sup. Ct. 1952); *Kilburn v. Carr*, 157 Misc. 761, 284 N.Y. Supp. 748 (Sup. Ct. 1936). See text accompanying note 82 *infra*.

73. N.Y. Sess. Laws 1950, ch. 691, § 411, as amended, N.Y. Sess. Laws 1951, ch. 753, § 1.

74. County judge, special county judge, children's court judge, surrogate, special surrogate, district attorney, sheriff and county clerk.

75. Compare N.Y. Town Law §§ 20(4), 23. N.Y. County Law § 411 (Supp. 1959) contains an exception: a children's court judge may also hold the office of special county judge. "A County Judge . . . may also be the Children's Court Judge." *Farrell v. State*, 204 Misc. 148, 150, 123 N.Y.S.2d 29, 32 (Ct. Cl. 1953) (dictum). See also *Close v. Burden*, 163 App. Div. 83, 148 N.Y. Supp. 773 (3d Dep't 1914).

76. *Smith v. Dillon*, 267 App. Div. 39, 44 N.Y.S.2d 719 (3d Dep't 1943).

77. *Burns v. Wiltse*, 303 N.Y. 319, 102 N.E.2d 569 (1951). See Note, Dual Nomination

In addition to coming under the limited prohibition of section 411, county sheriffs are subject to a constitutional provision barring them from holding any other office.⁷⁸

School Districts. Section 2103(1) of the Education Law⁷⁹ states that no school district superintendent or supervisor is eligible to the office of trustee or member of the board of education, and no trustee or member of a board of education can hold the office of district clerk, collector, treasurer or librarian, except as otherwise provided by section 2130(1).⁸⁰ Section 2112(3),⁸¹ in turn, provides that a trustee or board member vacates his office by accepting either the office of district superintendent or supervisor.⁸² In school districts of cities with a population of less than 125,000, a board member may not hold any city office.⁸³

Fire Districts. Fire district officers are governed by the common law,⁸⁴ with the exception of section 175(3) of the Town Law which provides that membership in a volunteer fire company shall not disqualify a district fire commissioner, treasurer or secretary.

Evaluation. From the above discussion of the major New York statutes,⁸⁵ it is apparent that the pattern superimposed by the legis-

for Incompatible Offices, 16 Albany L. Rev. 242 (1952), urging a clarifying amendment to the law. The rule enunciated in the Burns case has been applied to dual nomination situations under other municipal dual office holding statutes. *O'Neill v. Slater*, 3 N.Y.2d 910, 145 N.E.2d 873, 167 N.Y.S.2d 928 (1957).

78. N.Y. Const. art. IX, § 5. See *People ex rel. Henry v. Nostrand*, 46 N.Y. 375 (1871); *Pearce v. Stephens*, 18 App. Div. 101, 45 N.Y. Supp. 422 (2d Dep't), *aff'd mem.*, 153 N.Y. 673, 48 N.E. 1106 (1897).

79. N.Y. Sess. Laws 1910, ch. 140, § 222, as amended, N.Y. Sess. Laws 1947, ch. 820, § 2103(1).

80. N.Y. Sess. Laws 1910, ch. 140, § 254, as amended, N.Y. Sess. Laws 1947, ch. 820, § 2130(1). This allows the board of education of a union free school district to appoint one of its members as clerk to the board. See also N.Y. Educ. Law § 1958 (4)(j) (Supp. 1959), which contains a somewhat broader exception applying to boards of cooperative educational services.

81. N.Y. Sess. Laws 1910, ch. 140, § 232, as amended, N.Y. Sess. Laws 1947, ch. 820, § 2112(3).

82. See cases cited note 72 *supra*.

83. N.Y. Educ. Law § 2502(7). In such districts, no city officer may be appointed school district clerk or treasurer without the written consent of the common council. N.Y. Educ. Law § 2503(15).

84. *People ex rel. Russell v. Board of Fire Comm'rs*, 76 Hun 146, 27 N.Y. Supp. 548 (Sup. Ct. 1894).

85. A multitude of minor statutes regulate isolated areas of dual office holding. See, e.g., N.Y. Munic. Law § 239-b; *Macrum v. Board of Supervisors*, 141 Misc. 358, 252 N.Y. Supp. 546 (Sup. Ct. 1931), *aff'd*, 235 App. Div. 370, 257 N.Y. Supp. 287 (2d Dep't 1932), *rev'd*, 261 N.Y. 193, 184 N.E. 817 (1933). For statutes not involving two municipal offices, and hence not within the scope of this article, see N.Y. Alco. Bev. Control Law § 16; N.Y. Correc. Law § 40; N.Y. Defense Emergency Law § 112; N.Y. Election Law §§ 30(2), 39(3); N.Y. Judiciary Law §§ 251, 251-a; N.Y. Mental Hygiene Law § 190-h(a). See also N.Y.

lature on the common law incompatibility doctrine has not simplified this area of municipal law. It is true that in some instances a broad statutory prohibition against the holding of second offices has replaced the vagueness of the common law, and where the statute goes far beyond the common law rule no question of reconciling the two is posed.⁸⁶ But while the wisdom of this shotgun approach to the problem is debatable, it is unquestionable that the number of piecemeal and overlapping statutes has compounded the municipal attorney's burden and the public servant's confusion. Some statutes cover only certain municipal officers and leave the rest to the common law,⁸⁷ while other statutes abrogate the common law rule and specifically permit the holding of otherwise incompatible offices.⁸⁸ Statutes regulating different municipalities often must be read together to determine whether any violation has occurred.⁸⁹

The appellate division has declared that "on the issue of incompatibility, if the statute and the common-law rule can stand together, the statute should not be so construed as to abolish the common-law rule."⁹⁰ In most instances statutes and common law do co-exist, emphasizing what is by now apparent: that dual municipal office holders in New York must remain aware of the complex interrelation of the two.

III. ADMINISTRATIVE PRONOUNCEMENTS

The reliance on opinions rendered by administrative agencies in this area of municipal law has been mentioned previously.⁹¹ In the absence of many judicial determinations,⁹² a body of "administrative law" has accrued frequently which is respected by municipalities as binding

Const. art. III, § 7; N.Y. Const. art. VI, § 10; N.Y. Const. art. VI, § 19. Each of these three constitutional provisions has been construed in two cases: art. III, § 7, *People v. Tremaine*, 252 N.Y. 27, 168 N.E. 817 (1929); *Stewart v. Mayor*, 15 App. Div. 548, 44 N.Y. Supp. 575 (2d Dep't 1897); art. VI, § 10, *People ex rel. Welch v. Bard*, 209 N.Y. 304, 103 N.E. 140 (1913); *Matter of Gilroy*, 11 App. Div. 65, 42 N.Y. Supp. 640 (2d Dep't 1896); art. VI, § 19, *Matter of Richardson*, 247 N.Y. 401, 160 N.E. 655 (1928); *People ex rel. Fennell v. Wilmot*, 127 Misc. 791, 217 N.Y. Supp. 477 (Sup. Ct. 1926).

86. See, e.g., N.Y. City Charter § 895; *People v. Irwin*, 166 Misc. 492, 2 N.Y.S.2d 686 (Sup. Ct. 1938).

87. See, e.g., N.Y. Gen. City Law § 3.

88. See, e.g., N.Y. Village Law § 43.

89. See cases cited note 72 *supra*.

90. *Childs v. Moses*, 265 App. Div. 353, 355, 38 N.Y.S.2d 704, 707 (1st Dep't 1942), *aff'd mem.*, 290 N.Y. 828, 50 N.E.2d 235 (1943).

91. See note 9 *supra*.

92. It will be noted that McKinney's Consolidated Laws pocket supplement annotations to N.Y. Town Law § 20(4) (usually the first place the New York lawyer looks for guidance in handling an incompatibility problem involving a town officer) consist of 32 citations to opinions of the Attorney General and Comptroller. No judicial decisions are reported.

precedent.⁹³ While most of the opinions of the Attorney General and the State Comptroller represent correct applications of common and statutory law, in some instances they would appear to have strayed from the courts' interpretation of the same.

Physical Impossibility. As demonstrated above,⁹⁴ the fact that it may be physically impossible for one man to perform the duties of two offices has never been deemed to cause common law incompatibility in New York.⁹⁵ Nevertheless, the Attorney General has stated that "*both physical impossibility and inconsistency should be taken into consideration in determining incompatibility of offices.*"⁹⁶ This does not appear to be the law.⁹⁷

Actual Conflict of Duties. Under the common law, incompatibility was predicated upon an actual conflict of duties between the two offices, *i.e.*, that one had the right to interfere per se with the other. However, the Comptroller has so stretched this rule that a man may not hold two offices if there is a chance, however remote, that the two municipalities he serves may do business with each other, thereby requiring him to advise each on the matter.⁹⁸ Thus, offices under two units of municipal government, such as fire district commissioner and town councilman, are deemed incompatible, even though the functions of the offices do not conflict per se. The fact that there is a remote possibility that the dual office holder might some day "be in the position of attempting to serve the best interests of two different groups of taxpayers"⁹⁹ does not establish that per se conflict of duties upon which common law incompatibility rested.

Common Law—Statute Relation. Where the common law and a statute can stand together, the statute should not be construed to abolish common law incompatibility.¹⁰⁰ When the statutory prohibition goes beyond the common law rule, it necessarily replaces the latter as far as a speci-

93. The action of the board of education in the Corsall case is an example.

94. See text accompanying notes 23-27 *supra*.

95. *People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874).

96. 31 State Dep't Rep. 748, 753 (1924). (Emphasis added.)

97. Cf. *People ex rel. Earwicker v. Dillon*, 38 App. Div. 539, 56 N.Y. Supp. 416 (2d Dep't 1899); *People ex rel. Russell v. Board of Fire Comm'rs*, 76 Hun 146, 27 N.Y. Supp. 548 (Sup. Ct. 1894). These cases, although decided on other grounds, hint that physical impossibility may constitute incompatibility in the limited area where a statute fixes a number of officers on a board and one man, by holding dual offices, would thus have two votes.

98. 13 Ops. State Comp. 222 (1957); 7 Ops. State Comp. 32 (1951); 6 Ops. State Comp. 168 (1950).

99. 6 Ops. State Comp. 168-69 (1950).

100. *Childs v. Moses*, 265 App. Div. 353, 355, 38 N.Y.S.2d 704, 707 (1st Dep't 1942), *aff'd mem.*, 290 N.Y. 828, 50 N.E.2d 235 (1943).

fied class of municipal officers is concerned.¹⁰¹ Conversely, a statutory exception to the common law should be treated as abrogating the latter in a limited area. Yet, the State Comptroller has stated that such a statute, although clearly allowing what the common law would have prohibited, does "not permit one person to hold two offices inherently incompatible."¹⁰² Such an interpretation is hard to reconcile with the plain wording of the statute and the legislative intent in enacting it.

Employee Situation. Although the common law rule covers only officers, recent administrative opinion has applied it when one position was an employment.¹⁰³ As the *Corsall* decision shows, this is not the law, although there may well be good reasons for wishing it were.¹⁰⁴ Confusion over the extent of the conflicts of interest rules and needless litigation over what constitutes an office for incompatibility purposes would be eliminated if the courts would adopt *a single standard prohibiting the holding of incompatible public positions*. In *Sebring v. Starner*,¹⁰⁵ where a city superintendent of public works was permitted to receive pay for serving as superintendent of the water works—probably an employment rather than an office—the court groped for such a standard when it asserted: "There is no statute or rule of law prohibiting the appointment to the positions so created of persons holding other city offices, provided such persons can perform the duties of both without imperiling public interests."¹⁰⁶

CONCLUSION

The common law prohibition against the holding of incompatible offices has been supplemented in New York by many prohibitory statutes purporting to regulate various instances of dual office holding. The case-statute-administrative opinion complex has caused substantial confusion in this area of municipal law. A thorough, independent job of research must be done in order to determine whether any combination of two offices may be held simultaneously by the same person.

Such a determination necessitates examining four basic problems: (1) Are two offices involved? If not, the prohibition does not apply.¹⁰⁷ (2) Is one office subject to the appointive power of the other? If so, dual holding of the two is prohibited and no question of incompatibility on other grounds arises. (3) Do one or both of the offices fall under a

101. *People v. Irwin*, 166 Misc. 492, 2 N.Y.S.2d 686 (Sup. Ct. 1938).

102. 11 Ops. State Comp. 710 (1955). But see 13 Ops. State Comp. 137 (1957).

103. 13 Ops. State Comp. 167 (1957); 13 Ops. State Comp. 3 (1957).

104. See note 18 supra; Kaplan and Lillich, supra note 17, at 163 n.35.

105. 119 Misc. 651, 197 N.Y. Supp. 201 (Sup. Ct. 1922).

106. *Id.* at 657, 197 N.Y. Supp. at 206.

107. But administrative opinion may find the situation subject to the conflicts of interest rules. See note 18 supra.

statutory provision forbidding or permitting their occupancy by one person at the same time? If this is the case, the statute controls and once again the incompatibility question is not reached. (4) Assuming that none of the above determines the case, are the offices incompatible at common law?

Whether common law incompatibility exists between two offices can only be determined by examining their respective functions to ascertain if the proper performance of the duties assigned to each would necessarily result in an actual conflict. Taking an example from an area of municipal law free of statute, may a fire district commissioner serve as an officer of a volunteer fire company?¹⁰⁸ Section 176(11) of the Town Law provides that fire district commissioners may adopt regulations and enforce discipline with respect to members of all fire companies. Thus, if a fire commissioner were appointed to an office in the company, questions of his behavior in the latter capacity would come before the board of fire commissioners, of which he was a member. It is evident that this *per se* right of interference gives rise to common law incompatibility,¹⁰⁹ a conclusion reached not so much by means of a general definition of incompatibility, as by an examination of the functions of each office to ascertain whether a conflict of duties exists.

APPENDIX

This appendix contains selected opinions of the Attorney General and the Comptroller relating to the incompatibility of village, city, town, county, school district and fire district offices. The opinions below were extracted from the 1943-1957 Reports of the Attorney General, the 1943-1956 Informal Opinions of the Attorney General and the 1945-1957 Opinions of the Comptroller Relating to Municipal Government

It should be remembered that these opinions, which are cross-indexed, are merely opinions. They must be examined in the light of the observations made in Part III of the above article and possible statutory changes. While some editorial discretion has been utilized in the compilation of this appendix, the authors have included opinions with which they do not agree. It is hoped that the appendix will serve municipal attorneys as a good starting point in their research.

Symbols have been used for convenience and to conserve space. IC—incompatible. C—compatible. 1948 AG 21—page 21 of the 1948 Report of the Attorney General. 1955 IAG 128—page 128 of the 1955 Informal Opinions of the Attorney General. 12 C 50—page 50 of volume 12 of the Opinions of the Comptroller Relating to Municipal Government.

When looking under a particular office of a municipality, subheadings indicate whether an opinion has considered the compatibility of that office with another municipal office. Thus under the initial entry it can be seen that an opinion of the Comptroller has deemed the offices of village assessor and village manager incompatible.

108. A special statutory exception permits him to serve as a member. N.Y. Town Law § 175(3).

109. 13 Ops. State Comp. 137 (1957).

VILLAGES

Assessor

Manager (Village)-IC-12 C 21; Trustee (Village)-IC-1 C 373.

Architect

Planning Board Member (Village)-IC-1955 IAG 128.

Attorney

Councilman (Town)-IC-1948 IAG 39; District Attorney-C-8 C 76; Justice of Peace-IC-13 C 222; Police Justice-IC-1950 IAG 159, 1955 IAG 68; Town Attorney-IC-1949 IAG 57; Treasurer-IC-7 C 83.

Auditor

Clerk (Village)-IC-9 C 34, 12 C 464; Treasurer (Village)-IC-9 C 34.

Board of Appeals

Clerk-IC-1955 IAG 75; Planning Board Member-IC-11 C 245; Police Justice-IC-1954 IAG 61, 4 C 381.

Board of Commissions

Trustee-C-1943 IAG 85.

Building Inspector

Town Building Inspector-C-1951 IAG 101.

Clerk

Assessor (Town)-C-11 C 67; Auditor-IC-9 C 34, 12 C 464; Board of Appeals-IC-1955 IAG 75; Collector (Village)-C-1 C 118; Election Inspector-C-1954 IAG 4, 11 C 494; Janitor (Village)-IC-13 C 273; Justice of Peace-C-1955 IAG 153, 5 C 160, 6 C 22; Manager-IC-12 C 21; Mayor-IC-11 C 129; Planning Board Member-IC-1955 IAG 75; Policeman-C-1 C 118; Secretary to Planning Board-IC-1955 IAG 75; Supervisor (Town)-C-12 C 470; Treasurer-C-1 C 118.

Collector

Clerk (Village)-C-1 C 118; Justice of the Peace-C-5 C 160; Policeman C-1 C 118; Treasurer-C-1 C 118.

Engineer

Highway Superintendent-C-1948 IAG 10.

Engineer (Assistant)

Trustee-IC-5 C 321.

Filter Plant Operator

Zoning Inspector-C-9 C 383.

Health Officer

Trustee-IC-1948 IAG 40.

Janitor

Clerk (Village)-IC-13 C 273.

Manager

Assessor-IC-12 C 21; Clerk (Village)-IC-12 C 21; Purchasing Agent-IC-12 C 21; Treasurer-IC-12 C 21.

Mayor

Assessor (Town)-IC-1950 IAG 200; Attorney (Town)-C-1944 IAG 150; Clerk (Village)-IC-11 C 129; Policeman-C-1955 IAG 70; Supervisor (Town)-C-1951 IAG 91, 1954 IAG 59, 9 C 444; Treasurer-IC-11 C 129; Trustee (candidate for office of mayor)-C-1955 IAG 39; Water Superintendent-IC-1947 IAG 99.

Officers

District Superintendent-IC-3 C 274; Planning Board Members-C-12 C 153.

Planning Board Member

Architect-IC-1955 IAG 128; Board Member (Village)-IC-11 C 245; Board of Education-C-1954 IAG 96; Clerk (Village)-IC-1955 IAG 75; Officers (Village)-C-12 C 153.

Police Chief

Clerk to Town Police Judge-IC-1947 IAG 66; Justice of Peace-IC-11 C 710; Police Justice-IC-1954 IAG 13.

Police Justice

Assessor (town)-C-9 C 47; Attorney (Village)-IC-1950 IAG 159, 1955 IAG 68; Board of Appeals-IC-1954 IAG 61, 4 C 381; Chief of Village Police-IC-1954 IAG 13; Fire District Commissioner-C-1955 IAG 115; Fire Police Squad-IC-1956 IAG 64; Justice of Peace-C-1947 IAG 13, 3 C 27, 6 C 102, 7 C 194; Policeman-IC-1956 IAG 53; Treasurer-IC-1 C 118; Water Plant Operator (Village)-IC-1 C 65.

Policeman

Clerk (Village)-C-1 C 118; Collector-C-1 C 118; Councilman (Town)-C-1951 IAG 65; Justice of Peace-IC-1956 IAG 53; Laborer in Village Water Dept-IC-13 C 229; Mayor-C-1955 IAG 70; Police Justice (Village)-IC-1955 IAG 53; Policeman (Town)-C-8 C 164; Street Commissioner-C-1947 IAG 39; Trustee (Village)-IC-1948 IAG 24; Water Commissioner (Village)-C-1947 IAG 39.

Postmaster

Trustee (Village)-C-1954 IAG 16.

Purchasing Agent

Manager-IC-12 C 21.

Receiver of Taxes

Receiver of Taxes (Town)-C-1954 IAG 35.

Secretary of Village Planning Board

Clerk (Village)-IC-1955 IAG 75.

Street Commissioner

Highway Superintendent-C-6 C 124; Special Policeman (Village)-C-1947 IAG 39; Supervisor (Town)-C-1949 IAG 95.

Treasurer

Attorney (Village)-IC-7 C 83; Auditor (Village)-IC-9 C 34; Clerk (Village)-C-1 C 118; Collector (School District)-C-2 C 477; Collector (Village)-C-1 C 112; Fire Chief-C-7 C 314; Justice of Peace-C-5 C 160, 6 C 22; Manager-IC-12 C 21; Mayor-IC-11 C 129; Police Justice-IC-1 C 118.

Trustee

Assessor (Town)-C-11 C 106; Assessor (Village)-IC-1 C 373; Board of Commissions (Village)-C-1943 IAG 85; Candidate for Mayor-C-1955 IAG 39; Civil Service Commissioner (County)-IC-13 C 294; Constable-C-12 C 104; Councilman (Town)-IC-1948 IAG 39; Custodian (School District)-C-1947 IAG 54; Deputy Sheriff-C-3 C 480; District Superintendent-IC-1951 IAG 6; Engineer (Assistant) (Village)-IC-5 C 321; Fireman-C-7 C 79; Health Officer-IC-1948 IAG 40; Policeman (Village)-IC-1948 IAG 24; Postmaster (Village)-C-1954 IAG 16; Receiver of Taxes (Town)-IC-9 C 443; Supervisor-C-1948 IAG 98; Teacher-C-1951 IAG 6; Trustee (School)-C-4 C 587; Volunteer Fireman-C-7 C 79; Welfare Officer (Town)-C-9 C 152.

Water Commissioner

Fire District Commissioner-IC-2 C 651; Policeman (Village)-C-1947 IAG 39.

Water Department

Laborer (Village)-IC-13 C 229; Policeman-IC-13 C 229.

Water Plant Operator

Police Justice-IC-1 C 65.

Water Superintendent

Mayor (Village)-IC-1947 IAG 99.

Zoning Inspector

Filter Plant Operator (Village)-C-9 C 383.

CITIES**Alderman**

Civil Defense Deputy Director (County)-C-9 C 338; Tax Examiner-C-1955 AG 235;
Welfare Commissioner (County)-C-1948 IAG 118.

Attorney

City Court Judge-C-12 C 270.

Board of Review Member

Supervisor (City)-IC-11 C 708.

Chamberlain

Collector (School District)-C-2 C 710.

Charter Commission (City)

Supervisor (City)-C-11 C 708.

Chief Deputy City Chamberlain

Mayor (City)-IC-12 C 310.

Commissioner of Assessments and Taxation

Councilman-IC-12 C 94.

Commissioner of Finance

Janitor of Municipal Building-IC-13 C 29.

Constable

Fireman (Paid)-IC-1954 IAG 10; Janitor-C-11 C 627; Policeman-IC-1943 IAG 189.

Councilman

Commissioner of Assessments and Taxation-IC-12 C 94.

Health Commissioner

Secretary to County Health Board-IC-13 C 152.

Janitor

Constable (City)-C-11 C 627.

Janitor of Municipal Building

Commissioner of Finance-IC-13 C 29.

Judge

Attorney-C-12 C 270; Election Commissioner-IC-1951 IAG 75.

Mayor

Chief Deputy City Chamberlain-IC-12 C 310; Election Commissioner-IC-1951 IAG 74,
3 C 205.

Policeman

Constable (City)-IC-1943 IAG 189.

Public Works (Board)

Supervisor (City)-C-1949 IAG 71.

Recreation Commission

Commissioner, Board of Education-IC-1951 IAG 25.

Supervisor

Board of Review (City)-IC-11 C 708; Charter Commission (City)-C-11 C 703; Deputy Sheriff-IC-9 C 115; Engineer (Assistant) (Fire District)-IC-9 C 147; Public Works Member-C-1949 IAG 71.

Tax Examiner

Alderman-C-1955 AG 235.

TOWNS**Assessor**

Board of Education-C-1949 IAG 26; Cemetery Caretaker-IC-13 C 262; Children's Court Clerk-C-9 C 351; Civil Service Commissioner (County)-C-1950 IAG 99; Clerk (Village)-C-11 C 385; Constable (Town)-C-4 C 22; Director (School)-C-1951 IAG 118, 1952 IAG 17; Fenceviewer-C-6 C 103; Fire District Commissioner-C-8 C 222; Historian (Town)-C-10 C 392; Mayor (Village)-IC-1950 IAG 200; Policeman (Town)-C-1950 IAG 142; Police Justice (Village)-C-9 C 47; Trustee (Village)-C-11 C 106; Trustee Library Association-C-1946 IAG 83; Welfare Officer (Town)-C-8 C 345; Work on Town Highway-IC-13 C 297.

Assistant Building Inspector

Head Custodian of School District-C-10 C 86; Planning Board Member-IC-12 C 142.

Attorney

Attorney (School District)-C-13 C 342; District Attorney-C-1952 IAG 5; Fire Department Chief (Fire District)-C-4 C 115; Fire District Attorney (separate Board of Commissioners)-C-3 C 353; Improvement District Attorney (separate Board of Commissioners)-C-3 C 418; Justice of Peace-IC-13 C 357; Mayor (Village)-C-1944 IAG 150; Trustee of School District-C-10 C 264; Village Attorney-IC-1949 IAG 57.

Board Member

Attorney for Improvement District having separate Commissioners-C-3 C 418; Treasurer (Fire District)-C-8 C 73.

Board of Appeals

Supervisor-IC-1952 IAG 41, 2 C 39.

Bookkeeper to Supervisor

Clerk (Town)-IC-1 C 389; Deputy Clerk-IC-12 C 52; Tax Collector-IC-13 C 357.

Bookkeeper for Water District

Clerk (Town)-IC-10 C 70.

Building Inspector

Building Inspector (Village)-C-1951 IAG 101; Fire District Engineer-C-1947 IAG 40; Planning Board Secretary-C-1 C 444; Secretary to Board of Appeals-IC-13 C 335; Special Policeman-C-12 C 104.

Candidate for Elective Town Office

Inspector of Election-IC-1955 IAG 184.

Cemetery Caretaker

Town Assessor-IC-13 C 262.

Chairman of Assessors (Town)

Clerk-C-11 C 67; Enforcement Officer and Assistant-C-9 C 385; Tax Collector-C-11 C 67.

Clerk

School District Trustee-C-11 C 385.

Clerk (Police Judge)

Chief of Police (Village)-IC-1947 IAG 66.

Clerk (Supervisor)

Clerk (Town)-IC-1 C 389.

Clerk (Town)

Bookkeeper to Supervisor-IC-1 C 389; Chairman of Town Assessors-C-11 C 67; Clerk to Supervisor-IC-1 C 389; Collector (School)-C-8 C 252; Collector (Town)-IC-1950 IAG 78; Comptroller (Town)- IC-1943 IAG 50; Custodian of voting machines-C-12 C 247; Deputy Supervisor-C-10 C 410; Dog Enumerator-C-2 C 45, 12 C 247; Enforcement Officer and Assistant-C-9 C 385; Fire District Treasurer-C-9 C 438; Historian-C-12 C 47; Janitorial Services-IC-11 C 723; Registrar-C-6 C 61; Registrar of Vital Statistics-C-12 C 247; Secretary to Town Planning Board and Town Board of Appeals-C-11 C 431; Water District Bookkeeper-IC-10 C 70; Welfare Officer (Town)-C-1951 IAG 118, 3 C 491.

Collector

Clerk (Town)-IC-1950 IAG 78; Deputy Town Clerk-C-4 C 468; Highway Employee (Town)-IC-6 C 43; Election Inspector-IC-8 C 205.

Comptroller

Clerk (Town)-IC-1943 IAG 50.

Constable

Assessor (Town)-C-4 C 22; Deputy Sheriff-C-7 C 100; Dog Warden-C-2 C 371, 3 C 391; Justice of Peace-IC-6 C 66; Trustee (Village)-C-12 C 104.

Councilman

Attorney (Village)-IC-1948 IAG 39; Attorney (School District)-C-13 C 201; Chief Engineer Fire District-C-12 C 3; Children's Court Clerk-C-9 C 351; Deputy Sheriff-C-1950 IAG 187, 8 C 383; Director (School)-C-5 C 586; Fire District Commissioner-IC-6 C 168, 7 C 32; Historian (Town)-C-1945 IAG 23; Planning Board Commissioner-IC-1952 IAG 42; Policeman (Village)-C-1951 IAG 65; Special County Judge and Surrogate-C-1944 IAG 154; Trustee (School)-C-6 C 168; Trustee (Village)-IC-1948 IAG 39; Water Superintendent (Town)-IC-2 C 652; Work on Town Highways-IC-13 C 297; Zoning Commission Member-IC-10 C 350; Zoning Board of Appeals Member-IC-13 C 354.

Deputy Clerk

Bookkeeper- IC-12 C 52; Collector (Town)-C-4 C 468; Historian (Town)-C-10 C 10; Senior Account Clerk-IC-6 C 395; Supervisor-IC-7 C 233.

Deputy Supervisor

Clerk (Town)-C-10 C 410.

Dog Enumerator

Clerk (Town)-C-2 C 45, 12 C 247; Extra Policeman-C-13 C 207; Justice of Peace-IC-10 C 418; Tax Collector-C-13 C 355.

Dog Warden

Constable-C-2 C 371, 3 C 391; Extra Policeman-C-13 C 207.

Election Inspector

Attendance Officer-IC-4 C 460; Candidate for elective town office-IC-1955 IAG 184; Clerk (Village)-C-1954 IAG 4, 11 C 494; Custodian (School)-C-6 C 243; Tax Collector-IC-1954 IAG 91; Town Collector-IC-8 C 205; Welfare Officer (Town)-IC-8 C 205.

Election Board Member

Commissioner of Fire District-IC-9 C 57.

Enforcement Officer and Assistant

Chairman of Assessors-C-9 C 385; Clerk (Town)-C-9 C 385; Fire Department Inspector-IC-1955 IAG 105.

Extra Policeman

Dog Warden-C-13 C 207; Dog Enumerator-C-13 C 207.

Fenceviewer

Assessor-C-6 C 103.

Fire Warden

Highway Superintendent (Town)-C-8 C 383.

Health Officer

Supervisor-IC-1 C 466.

Highway Employee

Collector-IC-6 C 43; Councilman-IC-1 C 591; Highway Superintendent-IC-5 C 105; Justice of Peace-IC-1943 IAG 256; Welfare Officer (Town)-C-1952 IAG 7.

Highway Superintendent

Engineer (Village)-C-1948 IAG 10; Fire District Commissioner-C-5 C 463; Fire Warden (Town)-C-8 C 383; Highway Employee-IC-5 C 105; Playground Superintendent-C-7 C 354; Street Commissioner (Village)-C-6 C 124.

Historian

Assessor-C-10 C 392; Clerk-C-12 C 47; Councilman (Town)-C-1945 IAG 23; Deputy Clerk (Town)-C-10 C 10.

Improvement District Having Commissioner

Attorney (Town)-C-3 C 418; Board Members-C-3 C 418; Sanitary Inspector-C-3 C 198.

Janitorial Services

Clerk (Town)-IC-11 C 723.

Justice of Peace

Attorney (Fire District)-C-1951 IAG 96, 13 C 201; Attorney (School District)-C-1951 IAG 96, 13 C 124; Attorney (Town)-IC-13 C 357; Attorney (Village)-IC-13 C 222; Board of Education Member-C-1949 IAG 37, 12 C 145; Children's Court Clerk-C-9 C 351; Clerk (Village)-C-1955 IAG 163, 5 C 160, 6 C 22; Collector (Village)-C-5 C 160; Constable (Town)-IC-6 C 66; Coroner-IC-2 C 137; Deputy Sheriff-IC-1949 IAG 492; Dog Enumerator-IC-10 C 418; Election Commissioner-C-1949 IAG 3; Fire District Commissioner-IC-1946 IAG 8, 1947 IAG 95, 1948 IAG 3, 5 C 463, 7 C 32; Fire District Secretary-C-7 C 122; Fire Police Squad Member-IC-1956 IAG 64; Highway Employee (Town)-IC-1943 IAG 256; Police Chief-IC-11 C 710; Police Judge (Village)-C-1947 IAG 13, 2 C 280, 3 C 27; Policeman-IC-1956 IAG 53; Registrar of Vital Statistics-IC-12 C 36; Sealer of Weights and Measures-IC-12 C 129; Special Counsel (Town)-IC-9 C 110; Supervisor-IC-5 C 390, 7 C 425; Treasurer (Village)-C-5 C 160, 6 C 22; Trustee (School District)-C-1948 IAG 3; Veterans Service Agency Director (local)-

- IC-2 C 535; Water Superintendent-IC-2 C 652; Welfare Officer-IC-1944 IAG 49; Work on town highways-IC-13 C 297.
- Member of Board (Town)**
Attendance Officer-IC-1955 IAG 140; Fire District Commissioner-IC-1955 IAG 4, 8 C 73; Fire District Officer (appointed by Board)-IC-8 C 73; Supervisor-IC-7 C 132.
- Planning Board Commissioner**
Councilman (Town)-IC-1952 IAG 42; Supervisor (Town)-IC-1952 IAG 41, 2 C 39; Zoning Board of Appeals (Town)-C-13 C 241.
- Planning Board Member**
Assistant Building Inspector-IC-12 C 142.
- Planning Board Secretary**
Building Inspector-C-1 C 444.
- Playground Superintendent**
Highway Superintendent-C-7 C 354.
- Policeman**
Assessor (Town)-C-1950 IAG 142; Deputy Sheriff-C-7 C 100; Special Policeman (Village)-C-8 C 164.
- Police Officer**
Fire District Commissioner-C-11 C 63.
- Receiver of Taxes**
Receiver of Taxes (Village)-C-1954 IAG 35; Trustee (Village)-IC-9 C 443.
- Refuse Commissioner**
Attendant (Supreme Court)-C-12 C 61.
- Registrar**
Clerk (Town)-C-6 C 61.
- Registrar of Vital Statistics**
Clerk (Town)-C-6 C 61, 12 C 247; Justice of Peace-IC-12 C 36.
- Secretary to Board of Appeals**
Clerk (Town)-C-11 C 431; Town Building and Zoning Inspector-IC-13 C 335.
- Secretary to Town Planning Board**
Clerk (Town)-C-11 C 431.
- Sewer District Commissioner**
Fire Commissioner-C-9 C 67.
- Special Counsel (Town)**
Justice of Peace-IC-9 C 110.
- Special Policeman**
Building Inspector-C-12 C 104.
- Superintendent of Highways**
Committeeman-C-12 C 205; Vice Chairman of County Committee-C-12 C 205.
- Supervisor**
Attendance Officer-IC-1950 IAG 179; Attendance Supervisor-C-1950 IAG 179; Board of Appeals (Town)-IC-1952 IAG 41, 2 C 39; Board of Education-C-1949 IAG 85; Children's Court Clerk-IC-9 C 351; Clerk (Village)-C-12 C 470; Deputy Commissioner Social Welfare (County)-IC-3 C 253; Deputy Sheriff-IC-9 C 351; Deputy Town Clerk-IC-7 C 233; Fire District Commissioner-IC-7 C 32; Fire District Secretary-C-12 C 332; Fire District Treasurer-C-13 C 332; Health Officer-IC-1 C 466; Highway Account Clerk-IC-1950 IAG 115; Justice of Peace-IC-5 C 390, 7 C 425; Mayor (Village)-C-1951 IAG 91, 1954 IAG 59, 9 C 444; Planning Board (Town)-IC-1952 IAG 41, 2 C

39; Reading Clerk (County)-IC-7 C 451; Street Commissioner (Village)-C-1949 IAG 95; Town Board Member-IC-7 C 132; Treasurer (School District)-C-4 C 361; Trustee (School District)-IC-1 C 251, 354; Trustee (Village)-C-1948 IAG 93; Welfare Officer (Town)-C-8 C 80.

Supervisor's Bookkeeper

Tax Collector-IC-13 C 357.

Tax Collector

Bookkeeper to Supervisor-IC-13 C 357; Chairman of Town Assessors-C-11 C 67; Dog Enumerator-C-13 C 355; Inspector of Elections-IC-1954 IAG 91.

Veterans Service Agency Director (Local)

Justice of Peace-IC-2 C 535.

Water Superintendent

Councilman-IC-2 C 652; Justice of Peace-IC-2 C 652.

Welfare Officer

Assessor (Town)-C-8 C 345; Clerk (Town)-C-1951 IAG 118, 3 C 491; Election Commissioner-C-1950 IAG 200; Election Inspector-IC-8 C 205; Employee (Town highway)-C-1952 IAG 7; Justice of Peace-IC 1944 IAG 49; Supervisor-C-8 C 80; Trustee (Village)-C-9 C 152.

Work on Town Highways

Assessor-IC-13 C 297; Justice of Peace-IC-13 C 297; Councilman-IC-13 C 297.

Zoning Board of Appeals (Town)

Councilman (Town)-IC-13 C 354; Town Planning Board-C-13 C 241.

Zoning Commission Member

Councilman (Town)-IC-10 C 350.

COUNTIES

Auditor

Treasurer (County)-IC-4 C 34.

Board of Supervisors

Director of Civil Defense-C-11 C 661.

Bookkeeper (Treasurer's office)

Supreme Court Librarian-C-5 C 362.

Children's Court Clerk

Assessor (Town)-C-9 C 351; Councilman (Town)-C-9 C 351; Justice of Peace-C-9 C 351; Supervisor (Town)-IC-9 C 351.

Civil Defense Commissioner

Sheriff-IC-11 C 480.

Civil Defense Director

Alderman (City)-C-9 C 338; Civil Service Secretary (County)-C-9 C 134; Fire Advisory Board Chairman (County)-C-8 C 182.

Civil Service Commissioner (County)

Assessor (Town)-C-1950 IAG 99; Secretary to Civil Service Commission (County)-IC-3 C 519; Trustee (Village)-IC-13 C 294.

Civil Service Secretary

Civil Defense Director (County)-C-9 C 134; Commissioner of Civil Service (County)-IC-3 C 519; Highway Superintendent, Acting (County)-IC-7 C 348.

Clerk

Board of Education Member-C-11 C 709; Secretary-C-12 C 249.

Commissioner of Public Welfare

Supervisor-IC-1946 IAG 47.

Committeeman

Superintendent of Highways (Town)-C-12 C 205.

Coroner

County Home Physician-C-4 C 181; Jail Physician-C-7 C 347; Justice of Peace-IC-2 C 137; Medical Consultant (Welfare-County)-C-1946 IAG 56; School Physician-C-1946 IAG 56.

County Attorney (Special)

District Attorney-IC-1943 IAG 266.

County Clerk

Board of Education Member-C-11 C 709; Secretary-C-12 C 249.

Custodian of Voting Machines

Assessor (Town)-IC-8 C 133; Election Inspector-IC-9 C 439; Fire District Secretary-IC-8 C 133.

Deputy Commissioner Social Welfare

Supervisor (Town)-IC-3 C 253.

Deputy Sheriff

Constable-C-7 C 100; Councilman (Town)-C-1950 IAG 187, 8 C 383; Justice of Peace-IC-1949 IAG 492; Park Employee (County)-C-2 C 679; Supervisor (City)-IC-9 C 115; Supervisor (Town)-IC-9 C 351; Trustee (Village)-C-3 C 480.

Director County Child's Guidance Center

Director County Mental Health Board-C-12 C 457.

Director of Civil Defense

Board of Supervisors-C-11 C 661.

Director of County Mental Health Board

Director of County Child's Guidance Center-C-12 C 547.

District Attorney

County Attorney-IC-1943 IAG 266; School District Attorney-C-1952 IAG 5; Town Attorney-C-1952 IAG 5; Village Attorney-C-8 C 76.

Election Commissioner

Board of Education-IC-5 C 532; City Judge-IC-1951 IAG 75; Justice of Peace-C-1949 AG 3; Mayor (City)-IC-1951 IAG 74, 3 C 205; Welfare Officer (Town)-C-1950 IAG 200.

Fire Advisory Board Chairman

Civil Defense Director (County)-C-8 C 182; County Fire Coordinator-C-1955 IAG 181.

Fire Advisory Board Member

County Fire Coordinator-C-1955 IAG 181.

Fire Coordinator

Member of County Fire Advisory Board-C-1955 IAG 181; Sheriff-IC-12 C 55.

Health District Commissioner

Registrar of Vital Statistics-C-10 C 93; Secretary to County Health Board-IC-13 C 152.

Highway Account Clerk

Supervisor (Town)-IC-1950 IAG 115.

Highway Employee

Public Health Officer (City)-IC-10 C 73.

Highway Superintendent

Civil Service Secretary-IC-7 C 348; Engineer (Village)-C-1948 IAG 10.

Historian

Surrogate-C-1945 IAG 29.

Jail Physician

Coroner-C-7 C 347.

Librarian (Supreme Court)

Bookkeeper (County Treasurer's office)-C-5 C 362.

Medical Consultant (Welfare)

Coroner-C-1946 IAG 56.

Park Employee

Deputy Sheriff-C-2 C 679.

Physician (County Home)

Coroner-C-4 C 181.

Probation Officer

Sealer of Weights and Measures (County)-IC-8 C 247.

Reading Clerk

Supervisor-IC-7 C 451.

Registrar of Vital Statistics

Health District Commissioner (County)-C-10 C 93.

Sealer of Weights and Measures

Probation Officer (County)-IC-8 C 247; Justice of Peace-IC-12 C 129.

Secretary

Clerk (Board of Supervisors)-C-12 C 249.

Secretary to County Health Board.

City Health Commissioner-IC-13 C 152.

Sheriff

Civilian Defense Commissioner (County)-IC-11 C 480; County Fire Coordinator-IC-12 C 55.

Special County Judge

Councilman (Town)-C-1944 IAG 154.

Surrogate

Councilman (Town)-C-1944 IAG 154; Historian (County)-C-1945 IAG 29.

Treasurer

Auditor (County)-IC-4 C 34.

Vice Chairman of County Committee

Town Superintendent of Highways-C-12 C 205.

Welfare Commissioner

Alderman (City)-C-1948 IAG 118.

SCHOOL DISTRICTS**Attendance Officer**

Election Inspector-IC-4 C 460; Supervisor (Town)-IC-1950 IAG 179; Town Board Member-IC-1955 IAG 140.

Attendance Supervisor

Supervisor (Town)-C-1950 IAG 179.

Attorney

Attorney (Town)-C-13 C 342; Councilman (Town)-C-13 C 201; District Attorney-C-1952 IAG 5; Justice of Peace-C-1951 IAG 96, 13 C 124.

Board of Education Members

Assessor (Town)-C-1949 IAG 26; Clerk (County)-C-11 C 709; Clerk (Union District)-C-1950 IAG 158, 7 C 69; Election Commissioners-IC-5 C 532; Fire Commissioner-C-12 C 3; Justice of Peace-C-1949 IAG 37, 12 C 145; Planning Board Member-C-1954 IAG 96; Recreation Commission-IC-1951 IAG 25; Recreation Committee-C-11 C 282; Supervisor (Town)-C-1949 IAG 85.

Clerk

Board of Education Members-C-1950 IAG 158, 7 C 69; Collector (School)-IC-1947 IAG 65, 11 C 129; Principal-C-5 C 400.

Clerk of Board of Cooperative Education Services

Teacher in Educational Program-C-13 C 3.

Collector

Chamberlain (City)-C-2 C 710; Clerk (School District)-IC-1947 IAG 65, 11 C 129; Clerk (Town)-C-8 C 252; Teacher-C-3 C 247; Treasurer (School)-IC-5 C 314, 5 C 359; Treasurer (Village)-C-2 C 477.

Custodian

Election Inspector-C-6 C 243; Trustee (Village)-C-1947 IAG 54.

Director

Assessor-C-1951 IAG 118; Councilman (Town)-C-1952 IAG 17, 5 C 586; Fire District Commissioner-C-8 C 73.

District Superintendent

Trustee (Village)-IC-1951 IAG 6; Village Office-IC-3 C 274.

Head Custodian

Assistant to Building Inspector-C-10 C 86.

Library Trustee

Treasurer (School District)-IC-8 C 379.

Physician

Coroner-C-1946 IAG 56.

Principal

Clerk (School)-C-5 C 400.

Recreation Committee

Board of Education Member-C-11 C 282.

Teacher

Clerk of Board of Cooperative Educational Services-C-13 C 3; Collector (School)-C-3 C 247; Treasurer (Central District)-C-3 C 247; Treasurer (Common District)-C-3 C 247; Trustee (Village)-C-1951 IAG 6.

Treasurer

Collector (School)-IC-5 C 314, 5 C 359; Supervisor (Town)-C-4 C 361; Teacher-C-3 C 247; Trustee (Library-School District)-IC-8 C 379.

Trustee

Attorney (Town)-C-10 C 264; Clerk (Town)-C-11 C 385; Councilman (Town)-C-6 C 168; Fire District Commissioner-C-1948 IAG 3, 8 C 73; Justice of Peace-C-1948 IAG 3; Trustee (Village)-C-4 C 587; Supervisor-IC-1 C 251, 1 C 354, 4 C 361.

FIRE DISTRICTS**Assistant Engineer**

Fire District Commissioner-IC-1956 IAG 39.

Attorney

Attorney (Town)-C-3 C 353; Justice of Peace-C-1951 IAG 96, 13 C 201.

Chief Engineer

Councilman (Town)-C-12 C 3; District Cleaner of Fire Headquarters-IC-13 C 199; Fire District Commissioner-IC-1956 IAG 39.

Chief of Fire Department

Attorney (Town)-C-4 C 115; Commissioner (Fire District)-IC-1949 IAG 11, 1949 IAG 104; Treasurer (Village)-C-7 C 314.

Commissioner

Assessor (Town)-C-8 C 222; Assistant Engineer of Fire District-IC-1956 IAG 39; Board of Education Member-C-12 C 3; Chief Engineer-IC-1956 IAG 39; Chief of Fire Dept-IC-1949 IAG 11, 1949 IAG 104; Councilman (Town)-IC-7 C 32, 6 C 169; Deputy Treasurer (Fire District)-IC-7 C 256; Director, School-C-8 C 73; Election Board-IC-9 C 57; Emergency Relief Squad-C-1956 IAG 64; Fire District Officer-IC-13 C 137; Fire Police Squad-C-1956 IAG 64; Justice of Peace-IC-1946 IAG 8, 1947 IAG 95, 1948 IAG 3, 5 C 463, 7 C 32; Highway Superintendent-C-5 C 463; Police Justice-C-1955 IAG 115; Police Officer-C-11 C 63; School Director-C-8 C 73; School Trustee-C-1948 IAG 3, 8 C 73; Sewer District Commissioner (Town)-C-9 C 67; Supervisor (Town)-IC-7 C 32; Town Board Member-IC-1955 IAG 4, 8 C 73; Trustee School District)-C-1948 IAG 3, 8 C 173; Volunteer Fire Company (member)-C-1954 IAG 11, 3 C 137; Volunteer Fire Company (officer)-IC-13 C 137; Water District Commissioner-IC-2 C 651.

Deputy Treasurer

Commissioner-IC-7 C 256.

District Cleaner of Fire Headquarters

Chief Engineer of Fire District-IC-13 C 199.

Engineer

Building Inspector, Assistant (Town)-C-1947 IAG 40; Fireman (Paid)-C-8 C 270; Supervisor (City)-IC-9 C 147.

Fire Coordinator

Sheriff-IC-12 C 55.

Fire District Officer

Board Member (Town)-IC-8 C 73; Commissioner-IC-13 C 137.

Fireman (Paid)

City Constable-IC-1954 IAG 10; Engineer-C-8 C 270; Fire District Treasurer-IC-11 C 327; Fireman (Volunteer)-IC-1954 IAG 123.

Fireman (Volunteer)

Commissioner-C-13 C 137; Fireman (Paid)-IC-1954 IAG 123; Officer-IC-13 C 137; Trustee (Village)-C-7 C 79.

Fire Police Squad

Fire District Commissioner-C-1956 IAG 64; Justice of Peace-IC-1956 IAG 64; Police Justice (Village)-IC-1956 IAG 64.

Inspector of Fire Department

Enforcement Officer-IC-1955 IAG 105.

Member of Emergency Relief Squad

Fire District Commissioner-C-1956 IAG 64.

Secretary

Justice of Peace-C-7 C 122; Supervisor (Town)-C-13 C 332.

Treasurer

Board Member (Town)-C-8 C 73; Clerk (Town)-C-9 C 438; Fireman (Paid)-IC-11 C 327; Supervisor (Town)-C-13 C 332.