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OPINION	:	No. 80-601
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of	:	<u>July 10, 1980</u>
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SUBJECT: HOLDING OFFICES OF COUNTY PLANNING COMMISSIONER AND CITY COUNCILMAN SIMULTANEOUSLY—The offices of county planning commissioner and city councilman are incompatible offices; accordingly, an individual may not simultaneously hold both offices.

Are the offices of county planning commissioner and city councilman incompatible offices so that an individual may not simultaneously hold both offices?

CONCLUSION

The offices of county planning commissioner and city councilman are incompatible offices; accordingly, an individual may not simultaneously hold both offices.

ANALYSIS

Members of a county planning commission and of a city council hold public offices. (Gov. Code §§ 1001, 36502; 56 Ops. Cal. Atty. Gen. 488, 489 (1973); 53 Ops. Cal. Atty. Gen. 302 (1970).) Since there is no express constitutional or statutory provision which

prohibits the simultaneous holding of these two offices, we look to the common law doctrine as to incompatibility of offices to determine whether such is legally prohibited.

In 56 Ops. Cal. Atty. Gen. 488, *supra*, we concluded in a somewhat analagous situation that the offices of county planning commissioner and school district trustee are incompatible. In so concluding we summarized many of the attributes of the common law doctrine as follows:

“ . . . This doctrine arises out of considerations of public policy:

“Two offices are said to be incompatible when the holder cannot *in every instance* discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism *would* result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both” *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636, 641–642 (1940). (Emphasis added.)

As stated in 17 Ops. Cal. Atty. Gen. 129, 130 (1951), ‘The public is entitled to have the full *undivided* services of each public officer.’ (Emphasis added.) See also 21 Ops. Cal. Atty. Gen. 94, 97 (1953). When these services in the form of duties clash, divided loyalty is the result.

“The policy as stated in Chapman comprehends prospective as well as present clashes of loyalty. In the past this office has found incompatibility to exist with respect to potential conflicts of duty. See e.g., 53 Ops. Cal. Atty. Gen. 302 (1970), 38 Ops. Cal. Atty. Gen. 113, 115 (1961), 30 Ops. Cal. Atty. Gen. 184, 186–187 (1957), 21 Ops. Cal. Atty. Gen. 94, 96 (1953), 19 Ops. Cal. Atty. Gen. 119, 124–125 (1952), 15 Ops. Cal. Atty. Gen. 265, 266 (1950). ‘Only one significant clash of duties and loyalties is required to make . . . offices incompatible . . .’ 37 Ops. Cal. Atty. Gen. 21, 22 (1961). ‘The existence of devices to avoid . . . [conflicts] neither changes the nature of the potential conflict nor provides assurance that they would be employed. . . .’ 38 Ops. Cal. Atty. Gen. 121, 125 (1961).”

An examination of the statutory powers and duties of a county planning commission, which by statute may also be, or be a component of, the county “planning

agency” (Gov. Code § 65100, subd. (a)),¹ demonstrates a number of specific areas where conflicts of duties and loyalties would potentially exist were a planning commissioner to hold the office of city councilman simultaneously.

A county planning agency is responsible for the preparation of the county general plan, and may, or if directed by the, county board of supervisors, shall prepare “specific plans,” including detailed regulations, conditions, programs, and proposed legislation, for implementation of the county general plan. (§§ 65300–65307; 65450–65453.) A city council is responsible for the *adoption* of its own long range general plan prepared by its own planning agency. (§§ 65350–65360.) Since a long range general plan may include “any land outside its [the city or county’s] boundaries which in the planning agency’s judgment bears relation to its planning” (§ 65300), a city councilman could find himself in the anomalous position of having to decide whether to adopt a city general plan which included county territory which he had already “planned” in his county capacity.

With respect to considering a long range general plan, or any elements thereof, a county planning agency may refer its proposals on a discretionary basis to every city within the county for review and comment. (§ 65306.) Thus, a county planning commissioner who was also a city councilman in the same county could be faced with the decision whether to send his own county proposal to his city for its review and comment. Also, as a city councilman, he could be faced with the problem of possibly opposing his own county commission’s proposal. This type of interaction and divided loyalty could also arise in even more specific situations.

Another area where divided allegiance could arise is with respect to rezoning powers of a city council. Pursuant to section 65859 a “city may prezone unincorporated territory adjoining the city for the purpose of determining the zoning that will apply to such property in the event of subsequent annexation to the city.” Thus, a city councilman who is also a county planning commissioner could be required to plan and zone *the same territory* in his different capacities. Of course, the county and the city might have completely divergent ideas as to the proper use of the territory involved.

Another example of an area where clear conflict could arise is with respect to the “public building element” of the county general plan. (§ 65303, subd. (f).) A city may not acquire property for certain purposes nor construct public buildings in unincorporated territory until its proposal has been submitted to and reported upon by the county planning

¹ All section references are to the Government Code unless otherwise indicated. Section 65100, subdivision (a) provides “(a) By ordinance the legislative body of each county and city shall establish a planning agency. Such planning agency may be a planning department, a planning commission, or the legislative body itself, or any combination thereof.”

agency as to conformity with the county general plan. (§ 65402, subd. (b).) A city councilman could be required to pass upon his own city's proposal in his capacity as county planning commissioner if he were to hold the positions simultaneously.

Another area replete with potential difficulties is the question whether the county and cities within the county should act "jointly" in matters such as the establishment of "planning areas" (§ 65600) and whether the county and city should have joint planning directors and staffs. (§ 65651.) Such policy decisions should be made by disinterested bodies, and not by bodies which have overlapping membership where conflicting interests might arise or exist.

The foregoing examples are not to be considered exhaustive. They do, however, point out that there are significant, potential clashes of duties and loyalties which could arise where an individual attempts to hold the office of county planning commissioner and city councilman of a city in the same county at the same time. Additionally, when one considers the vast range of matters encompassed by city and county planning, it takes little imagination to see that county planning will significantly impact upon city planning, and vice versa. Such planning activities for the county and for cities within the counties should not be performed by persons with divided loyalties. (*Cf.* Attorney General's Unpublished Opinion, I.L. 74-223, offices of California Highway Commission member and city planning commissioner incompatible: "What is best for the state in highway location may differ significantly as to what is best for the city itself." *Id.*, at p. 6.)

Accordingly, it is concluded that the offices of county planning commissioner and city councilman of a city in the same county are incompatible and may not be held simultaneously by the same person.
