The Town Tea Leaves – Compatibility of Office

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Direct link to video

There is no prohibition against one person holding two offices UNLESS one of the following situations apply:

1. Subordination
   - Position A cannot oversee any element of Position B.
   - Example: Although the Highway Superintendent is responsible for hiring and firing highway employees, the Town Board sets the salary and benefits of highway employees. Therefore, a town board member cannot also hold a position in the highway department.

2. Conflict of Duties
   - Duties may not be so inherently at odds on a regular basis that one person may not reasonably hold both positions at one. Another way to think of this is would one person holding both positions upset a system of checks and balances.
   - Example: A code enforcement officer should not also sit on the Zoning Board of Appeals.

3. Statutory Prohibition
   - There are a handful of statutes that explicitly prohibit dual office holding for certain positions.
   - Example: Town Law § 20 prohibits one person from holding two elected offices in the town.

Options for Smaller Municipalities

- The Attorney General’s Office has an opinion stating that smaller municipalities may adopt a local law superseding an incompatibility of office issue if it is in the best interest of the municipality (1983 Opns Atty Gen [Inf] 1117).

- Recommendations: Advertise for the position to ensure that no one else can reasonably hold the position that requires filling before appointing someone with an incompatibility issue. This way, the town has a record and basis for stating it is in the best interest of the town to adopt the local law superseding the incompatibility issue.