

## ASK THE LEAGUE, APRIL 2015

### **Can one person serve as both lister and justice of the peace?**

There is no statute that prevents a person from serving simultaneously as a justice of the peace and a lister. The positions are not ones that are listed in the incompatible office statute, 17 V.S.A. § 2647. However, the dual justice of the peace/lister role creates incompatibilities in the following circumstances:

1. *A person who holds both positions may not sit as a member of the board of civil authority during tax assessment appeals.* The board of civil authority (BCA) is made up of the town clerk, the members of the selectboard, and the justices of the peace. 24 V.S.A. § 801. During the tax assessment appeal process, the BCA determines whether the listers' assessment should be sustained or altered. It is a direct conflict of interest for a justice of the peace/lister to make such a determination about his or her own assessment as a lister. And, in fact, this is specifically precluded by 32 V.S.A. § 4404(d) which states that "listers ... shall not be eligible to serve as members of the board [of civil authority] while convened to hear and determine such appeals..." Therefore, the remaining members of the BCA will have to complete their tax appeal responsibilities without the participation of the member who is both justice of the peace and lister. Fortunately, the quorum rules for boards of civil authority allow the BCA to act with less than a majority of the total members. "The act of a majority of the board present at a meeting shall be treated as the act of the board." 24 V.S.A. § 801.

2. *In some cases, a person who holds both positions should not serve as a member of the board of abatement.* The board of tax abatement (BOA) is composed of the members of the BCA (selectboard, the town clerk, justices of the peace) plus the town treasurer and the listers. This does not mean that a justice of the peace/lister – who is representing two offices – gets two votes. Rather, such a person may only vote once. In fact, there are instances in which a justice of the peace/lister should refrain from exercising even one vote, for example when the board is considering whether there has been a "manifest error or mistake of the listers" pursuant to 24 V.S.A. §1535. In those cases, it will appear that a justice of the peace/lister has a vested interest in the outcome and may not be able to act impartially. A justice of the peace/lister should also recuse him or herself whenever he or she testifies in an abatement case, so as not to act as both witness and judge in the abatement hearing. In these instances, the remaining members of the board will have to complete their abatement responsibilities without the participation of the member who is both justice of the peace and lister.

3. *A justice of the peace who runs for election in a contested race for lister (or other town office) may not act an election official.* Justices of the peace are authorized to serve as election officials and to assist with local elections that are conducted by Australian ballot. 17 V.S.A. § 2451. Generally, a justice of the peace may serve as an election official in any election in which his/her name appears on the ballot as a candidate for justice of the peace. However, that same person may not serve as an election official if he or she is also a candidate for another office on

the ballot unless he or she is the only candidate for that office. Therefore, a justice of the peace may not act as an election official at an election in which he or she is running in a contested race for lister or any other town office.

In summary: the dual justice of the peace/lister role is not like wearing two hats such that either of them can be taken off at any given time. Rather, a person who is elected to both positions holds both position at all times, and until resignation, removal from office, or expiration of the elected terms.

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