

BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA

IN THE MATTER OF HOLDING)
DUAL POSITIONS OF SUPERVISOR)
AND FIRE CHIEF)

ORDINANCE NO. 828

THE BOARD OF SUPERVISORS OF THE COUNTY OF SIERRA ORDAINS as follows:

Ordinance Section One:

FACTUAL BACKGROUND

- A. The Sierra County Board of Supervisors acknowledges that the common law doctrine of "Incompatibility of Offices" holds that one individual may not simultaneously hold two public offices, the duties of which are incompatible with each other. The doctrine is enunciated in the case of *People ex rel. Chapman v. Rapsey*, 16 Cal.2d 636 (1940), and various Attorney Generals' Opinions.
- B. The purpose of the doctrine is to protect the public interest against conflicting loyalties arising out of the exercise of the powers and duties of two positions.
- C. "Where a public official is found to have accepted two public offices, common law doctrine provides for an automatic vacating of the first office ... Disqualification or abstention from those decisions where an actual clash of the two offices is found to occur, is not an available remedy under the common law doctrine." (Attorney General Handbook, Conflict of Interest (1989), p. 83).
- D. The Board of Supervisors also recognizes that Sierra County has a very small, rural population, and believes that the common law doctrine of Incompatibility of Offices may hinder volunteerism and community service upon which the County relies.
- E. Because the doctrine is based in common Law (rather than statute), the Attorney General has opined that the doctrine may be abrogated by statute or ordinance (cf. 66 *Ops. Cal. Atty. Gen.* 299, 302, *Atty. Gen. Handbook, Conflicts of Interests* (1989) p.83), if coordinating legislation is adopted by both entities involved permitting the holding of dual offices (i.e., County, City, Fire Districts, Fire Department, or other jurisdictional entities).
- F. It is the intention of the Sierra County Board of Supervisors to enact an ordinance abrogating the common law doctrine in the case of the public positions of County Supervisor and Fire Chief, so that a Sierra County Supervisor may also hold the public position of Fire Chief.

Ordinance Section Two: Part 2, Chapter 4, Sections 110 through 120 of the Sierra County Code are hereby added to read as follows:

CHAPTER 2.04 - BOARD OF SUPERVISORS

Sections:

2.04.110 Supervisor May Also Hold Office of Fire Chief

2.04.120 Recusal on Conflicting Activities

2.04.110 Supervisor May Also Hold Office of Fire Chief

Upon the adoption and filing with the Sierra County Clerk of a coordinating ordinance by each entity having jurisdiction over the Fire Department of which the individual(s) in issue is a Fire Chief ("Exempt Fire Chief") in the County of Sierra, the common law doctrine of "Incompatibility of Offices" shall not apply to the simultaneous holding of the offices of County Supervisor and Exempt Fire Chief.

2.04.120 Recusal on Conflicting Activities

Any Supervisor holding the dual positions of Supervisor and Fire Chief is prohibited from and shall recuse himself or herself from participating in any phase of any matter that involves potentially conflicting matters under the jurisdiction of both the County Board of Supervisors and the respective fire agency which has by ordinance provided for the "Exempt Fire Chief" position. Any Supervisor holding such dual positions is also precluded from participating in any such potentially conflicting matter which arose in the twelve months preceding his/her assuming the office of Supervisor, and for the subsequent twelve months following his/her vacating the "Exempt Fire Chief" position.

Ordinance Section Three: This ordinance shall take effect thirty (30) days after its passage. Before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in the Mountain Messenger, a newspaper of general circulation published in the County of Sierra, State of California.

Introduced at a regular meeting of the Board of Supervisors held on the 16th day of May, 1995, and passed and adopted by the Board of Supervisors of the County of Sierra, State of California, on the 6th day of June, 1995, by the following roll call vote, to-wit:

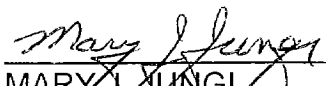
AYES: Supervisors McCaffrey, Bowling, Whitley
NOES: Supervisors McIntosh, Luchessi
ABSTAIN: None
ABSENT: None

COUNTY OF SIERRA



JEROME MC CAFFREY
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:



MARY J. JUNGI
CLERK OF THE BOARD

APPROVED AS TO FORM:



WILLIAM W. PANGMAN
COUNTY COUNSEL

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