

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
EQUITY NO. 111565

JAMES A. SHEETS

VS.

CITY OF QUINCY

FINDINGS, RULINGS AND ORDER FOR DECREE

The court finds and rules that an actual controversy has arisen and is specifically set forth in the pleadings, within the meaning of G. L. c. 231A, sec. 1 as amended.

The case was tried on a written "Agreed Statement\$ of Facts" and the relevant portions of these facts are as follows.

The petitioner is and has been a tenured instructor at Quincy Junior College for the past nine years, at an annual salary of \$16,500. The college is a public school organized pursuant to the provisions of G. L. c. 71, sec. 75, and is under the supervision and control of the Quincy School Committee. Conditions of employment, salary and policy are established by the school committee. Instructors at the college are not members of the city retirement system, however, they are members of the Massachusetts Teachers Retirement Fund.

On December 4, 1973, the petitioner was elected City Councilman from Ward 4 of the city of Quincy for a two year term which commenced on the first Monday of January 1974. On that day the petitioner voluntarily refrained from being inducted as a councilman because of questions raised

by the city solicitor regarding the right of the petitioner "to sit as a councilman and at the same time retain his teaching position."

A city councilman receives an annual salary of \$3,200. The city councilman does not act in any supervisory capacity, formulate policy or direct and control in any way, the Quincy School Committee, the college, or its employees. The school committee is vested with sole responsibility for running the public schools in the city, including the college. The school department's budget is funded by the city. The city councilmen may approve or disapprove capital items (funds for new buildings etc.), included in the budget.

The college derives much of its funds through student tuitions which are paid into the city treasury. The city has deeded a plot of land to the Commonwealth to effectuate the ultimate transfer of the college to the control of the State Board of Education.

The court rules that on the facts in this case there is no provision of law which forbids the petitioner from qualifying and entering upon the performance of his duties as a city councilman, merely because he is an instructor in the school system of the city.

The court finds and rules that there is no inherent conflict of interest involved in the petitioner serving in the two positions. The office of City Councilman is not incompatible with the teaching position of the petitioner. He may serve in both capacities.

As to the petitioner's right to receive compensation for both positions, the court rules that he is entitled to receive his salary as a city councilman and his salary as a school instructor. The provisions of G. L. c. 39, sec. 6A, c. 43, sec. 17A, which provide, in substance, that city officials (including city councillors) "--- shall receive for their services such salary as the City Council or other legislative body of said city shall

by ordinance determine, and shall receive no other compensation from the city ---", must be read as being limited to compensation for the performance of their duties as councillors, and it is not intended to apply to work performed in other branches of city government. (emphasis supplied)

Let a decree be entered accordingly.

DATED: February 7, 1974

Harry Kalus

Harry Kalus
Justice of the Superior Court

2/25/74

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