

October 3, 1996

OPINION NO. 96-050

The Honorable Maureen O'Connor
Summit County Prosecuting Attorney
53 University Avenue
Akron, Ohio 44308-1680

Dear Prosecutor O'Connor:

You have requested an opinion whether jail registrars who are employed by the county sheriff may serve simultaneously as deputy clerks of a municipal court located within the county served by the sheriff. Information provided indicates that the jail registrars are not deputized by the county sheriff, and are appointed as deputy clerks for the limited purpose of processing bonds for the clerk of the municipal court.

In 1995 Op. Att'y Gen. No. 95-020, I issued an opinion that employees of the county sheriff who serve as dispatchers may not be appointed as deputy clerks of a municipal court located within the county served by the county sheriff. In reaching this conclusion, I reasoned as follows:

An examination of the duties of the positions about which you ask discloses that an individual who serves simultaneously as a dispatcher in the county sheriff's office and deputy municipal court clerk would be subject to influences that jeopardize the independence of the judicial function. Pursuant to R.C. 2935.03(A), the county sheriff and his deputies are required to arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the county, an ordinance of a municipal corporation. After making a warrantless arrest for a violation of a municipal ordinance, a county sheriff or deputy sheriff is required to take the person before the municipal court having jurisdiction of the offense and file or cause to be filed an affidavit describing the offense for which the person was arrested. R.C. 2935.05; R. Crim. P. 4(E)(2). Upon the filing of the affidavit required by R.C. 2935.03, a "judge, clerk, or magistrate shall forthwith issue a warrant to the [sheriff or deputy sheriff] making the arrest." R.C. 2935.08; *accord* R. Crim. P. 4(A)(1). "All further detention and further proceedings shall be pursuant to such affidavit...and warrant." R.C. 2935.08.

It is thus conceivable that a situation could arise in which a deputy municipal court

clerk may be required to determine whether the county sheriff or a deputy sheriff had probable cause to make a warrantless arrest. *See generally* 1991 Op. Att'y Gen. No. 91-047 at 2-247 ("[t]he plain language of R.C. 2935.08 and R. Crim. P. 4 discloses that the General Assembly and the Ohio Supreme Court intended that individuals arrested without a warrant receive a post-arrest determination to ascertain whether the arresting officer had probable cause to make the arrest"). If the county sheriff or a deputy sheriff bring a person arrested without a warrant before a deputy municipal court clerk who is employed by the county sheriff as a dispatcher, the deputy clerk's ability to exercise clear and independent judgment in the matter could be called into question because it could be difficult for the deputy clerk to set aside his loyalty to his employer, the county sheriff. Moreover, the deputy clerk may be predisposed to find probable cause for fear of reprisals, in his position of dispatcher, by the county sheriff. Accordingly, when an individual simultaneously holds the positions of deputy municipal court clerk and dispatcher in the county sheriff's office, an impermissible conflict of interest exists because the individual is subject to influences that jeopardize the independence of the judicial function.

Id. at 2-114. Thus, since judicial functions must be performed independently of law enforcement functions to protect the credibility and integrity of the judicial branch of government, a clerk of a county or municipal court may not appoint deputy sheriffs or other employees of the county sheriff in which the court is located as deputy clerks of the court. *Id.*; 1984 Op. Att'y Gen. No. 84-028; 1961 Op. Att'y Gen. No. 2066, p. 132; *see also* 1988 Op. Att'y Gen. No. 88-093 (a clerk of a municipal court may not appoint a municipal police officer who serves within the jurisdiction of the court to the position of deputy municipal court clerk).

With respect to your specific inquiry, you have stated that the deputy clerk would have authority only to process bonds. The deputy clerk would not have authority to issue arrest warrants. I note, however, that the authority to create a deputy clerk with such limited authority is questionable. 1988 Op. Att'y Gen. No. 88-093 at 2-446 n.2. Pursuant to R.C. 1901.31(H), a deputy clerk of a municipal court is authorized to exercise "the duties appertaining to the office of the clerk." *Accord* R.C. 3.06(A). "Once the deputy clerk assumes his position, there is no affirmative restraint on his exercise of the conferred statutory authority." 1988 Op. Att'y Gen. No. 88-093 at 2-446. In addition, 1988 Op. Att'y Gen. No. 88-093 at 2-446 n.2 stated:

Even if the position of deputy clerk with limited authority did exist, its implementation might be cumbersome. The clerk of courts is not the only person who exercises authority over the deputy clerks. The court may also assign duties to the clerk and his deputies. R.C. 1901.31(F); R.C. 1901.31(H). Thus, even though in practice the clerk might treat the deputy clerk as having limited authority when assigning duties, the court might view the deputy clerk as having the full degree of authority delegated by the code. *See, e.g., State ex rel. Cramer v. Board of County Commissioners*, 18 Ohio St. 3d 157, 158, 480 N.E.2d 443, 445 (1985) ("[p]ursuant to R.C. 1901.31(H), deputy clerks _may perform the duties appertaining to the office of the clerk._ Further, R.C. 1901.31(F) provides that the clerk _shall have other powers and duties as are

prescribed by rule or order of the court._ These two statutory provisions give the court wide latitude in prescribing the particular duties of deputy clerks").

Thus, even though the clerk of a municipal court may limit the day-to-day activities performed by a deputy clerk, the deputy clerk retains statutory authority to perform any duties appertaining to the office of municipal court clerk. 1988 Op. Att'y Gen. No. 88-093 at 2-446. As a result, when an individual simultaneously holds the positions of deputy municipal court clerk and jail registrar in the county sheriff's office, a potential conflict of interest always exists because the individual is subject to influences that jeopardize the independence of the judicial function. Although the potential for conflict may be remote insofar as the day-to-day duties of the deputy clerks are limited by the clerk, the independence of the judicial function vis-a-vis the law enforcement function is at issue. In my role as Attorney General, I am unable to legally condone any practice which jeopardizes the independence of the judicial function. Moreover, notwithstanding the fact that the clerk has limited the day-to-day duties of the deputy clerks in question, a deputy municipal court clerk would be faced with a conflict of loyalties if he served also as a jail registrar for the sheriff of the county in which the court is located, since he would be serving masters with conflicting duties. *See* 1988 Op. Att'y Gen. No. 88-093 at 2-448. Therefore, in order to maintain a division between those who are empowered with law enforcement functions and judicial functions, I believe that jail registrars for the county sheriff may not serve as deputy clerks of a municipal court located within the county served by the sheriff.

In light of the foregoing, it is my opinion and you are advised that a jail registrar who is employed by the county sheriff may not hold simultaneously the position of deputy clerk of a municipal court located within the county served by the county sheriff. (1995 Op. Att'y Gen. No. 95-020, approved and followed.)

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS:

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