

OPINION NO. 75-040

Syllabus:

The position of Service Officer of the County Soldiers and Sailors Relief Commission is compatible with that of a councilman of a city located in the same county.

To: Robert L. Brown, Crawford County Pros. Atty., Bucyrus, Ohio
By: William J. Brown, Attorney General, May 29, 1975

I have your request for my opinion on the following question:

"Whether or not the position of Service Officer of a County Soldiers and Sailors Relief Commission is compatible with councilmen of one of the cities in said county."

A city councilman is a member of a city's legislative authority. See, R.C. 731.03. Section 731.02 of the Revised Code sets out the qualifications of such members, and it provides in pertinent part:

"Each member of the legislative authority . . . shall not hold any other public office . . . and shall not be interested in any contract with the city and no such member may hold employment with said city. A member who ceases to possess any such qualifications . . . shall forthwith forfeit his office."

(Emphasis added.)

In light of the above quoted statutory provision, particular attention here must focus on whether the Service Officer of a County Soldiers and Sailors Relief Commission is the holder of a "public office." I conclude that he is not.

The position of Service Officer is provided for in R.C. 5901.07 which reads:

"The soldiers' relief commission may employ a 'county veterans' service officer' who must be an honorably discharged veteran of the United States armed forces. The duties of such officer shall be to advise and assist persons in the armed forces of the United States, veterans of any war, and the wives, widows, children, parents, and dependents of such veterans in presenting claims or obtaining rights or benefits under any law of the United States or of this state.

"The commission may employ such service officer on a part or full time basis. No county commissioner or member of the commission shall be employed as service officer. The commission may employ the necessary clerks, stenographers, and other personnel to assist the service officer in the performance of his duties and fix their compensation. The board of county commissioners, upon the recommendation or approval of the commission, may provide suitable office space, supplies, and office and incidental expenses for such service officer. The compensation of the service officer and of any employee and any expenses incurred under this section shall be paid out of funds appropriated to the commission, as provided in section 5901.11 of the Revised Code."

In determining whether the functions of a Service Officer warrant a "public office" conclusion, the decision of the Ohio Supreme Court in State, ex rel. Landis v. Board of Commissioners, 95 Ohio St. 157 (1917), is instructive. There the Court, in determining that a county clerk was not the holder of a public office, focused on the character of the duties imposed stating:

"If specific statutory and independent duties are imposed upon an appointee in relation to the exercise of the police powers of the state, if the appointee is invested with independent power in the disposition of public property or with power to incur financial obligations upon the part of the county or state, if he is empowered to act in those multitudinous cases involving business or political dealings

between individuals and the public, wherein the latter must necessarily act through an official agency, then such functions are part of the sovereignty of the state [and of a public office]." Id. at 160-61.

Certainly the duties of the Service Officer are more than clerical but, on the other hand, the duties encompass only advising and assisting designated members of the public. The Service Officer has no authority to dispose of public property, to incur financial obligations on the part of the county, nor to take action on matters of business or political dealings between individuals and public agencies. Further, everything about the employment situation of the Service Officer is directly controlled by the Soldiers Relief Commission. It is the Commission which employs the Service Officer's staff, and it is the Commission which recommends to the county commissioners what office space, supplies and office and incidental expenses should be provided for the Service Officer.

It is on the basis of these described limitations of the Service Officer's authority that I conclude he is not a "public officer" within the meaning of R.C. 731.03, and does therefore hold a position compatible with that of city councilman. This same conclusion is reached in application of the common law test of incompatibility.

The common law that was set out by the Court in State, ex rel. Attorney General v. Gebert, 12 Ohio C.C.R. (n.s.) 274, 275 (1909) as follows:

"Offices are considered incompatible when one is subordinate to, or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both."

See also, State, ex rel. Wolf v. Shaffer, 6 Ohio N.P. (n.s.) 219, 221 (1906); State, ex rel. Hover v. Wolven, 175 Ohio St. 114 (1963). Obviously there is no subordination in either direction between a Service Officer, with county government responsibilities, and a city councilman, with municipal responsibilities. The only question is one of whether performance of the combined duties is a physical impossibility.

In regard to this issue I understand from our telephone conversation subsequent to your request that there is no physical impossibility of performance problem here, in terms of time to be expended, miles to be traveled, or otherwise. This additional information resolves the final question.

Accordingly, it is my opinion and you are so advised that the position of Service Officer of the County Soldiers and Sailors Relief Commission is compatible with that of a councilman of a city located in the same county.