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## SYLLABUS:

Whether one person may simultaneously serve as a member of the board of trustees of a district tuberculosis hospital, appointed pursuant to Section 339.23, Revised Code, and as a postmaster, a federal position, depends upon whether the proper federal authorities deem such service as member of the board of trustees not to be in conflict with the federal postal laws and regulations.

Columbus, Ohio, August 31, 1962

Hon. Everett Burton, Prosecuting Attorney  
Scioto County, Portsmouth, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“We have received a request from the Board of County Commissioners of Scioto County, Ohio, inquiring as to whether or not a Trustee of a District Tuberculosis Hospital, appointed under the provisions of Ohio Revised Code Section 339.23, can hold that appointed position and, at the same time, serve as Postmaster of the City of Portsmouth. The position of Trustee of the District Tuberculosis Hospital is a position without compensation.

“We have examined the Statutes and also your Opinions and the Opinions of your predecessors in office and can find no authority directly in point.

“Since this is the first time this question has been raised in this State, we would appreciate your Opinion as to whether or not the position of Trustee of a District Tuberculosis Hospital is compatible with the position of United States Postmaster of the City of Portsmouth.”

A district tuberculosis hospital is established under Section 339.21, Revised Code, and is made up of contiguous counties, not to exceed five. Under Section 339.23, Revised Code, the joint board of county commissioners (the board of the counties involved) appoints a board of trustees, which board select a site for and constructs, maintains and operates the hospital.

The position of postmaster is an office of the United States government. I do not believe it is necessary to discuss the duties of that position.

I have found no Ohio statutory or constitutional prohibition against one person simultaneously holding the two positions here considered. Under the common-law rule, 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.

There appears to be no reason to conclude that either of the positions here in question is in any way a check upon, or is subordinate to, the other. The duties of these positions are obviously not at all related, and are performed for different arms of government. As to physical possibility, that is a question of fact, not law; since the position of trustee of the hospital is a part-time position, it would probably be possible for one person to serve in both positions.

From the viewpoint of this state, therefore, the positions are apparently not incompatible. As noted earlier, however, the position of postmaster is an office in the government of the United States. Thus, the federal government, and particularly the post office department, must pass upon the question whether the holding of the position of trustee of the hospital would interfere with the proper performance of the duties of postmaster. I note in this regard that the federal postal laws and regulations contain certain provisions as to what other employment may be engaged in by postmasters, but I deem the interpretation of such laws and regulations in any particular case to be within the authority of the proper federal authorities, and not within the scope of this office.

I might note that in Opinion No. 2652, Opinions of the Attorney General for 1934, Vol. I, page 620, the then Attorney General saw no conflict between the positions of county auditor and postmaster unless the federal laws and regulations imposed a bar to a person serving in both capacities. As to this, he said, at page 623:

“\* \* \* This is of course a question that must be answered by the proper federal authorities, and it is accordingly improper for the Attorney General to render an opinion thereon. It is believed that a more specific answer to your question may not be given.”

Accordingly, it is my opinion and you are advised that whether one person may simultaneously serve as a member of the board of trustees of a district tuberculosis hospital, appointed pursuant to Section 339.23, Revised Code, and as a postmaster, a federal position, depends upon whether the proper federal authorities deem such service as member of the

board of trustees not to be in conflict with the federal postal laws and regulations.

Respectfully,

MARK McELROY

Attorney General