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COMPATIBILITY—TOWNSHIP TRUSTEE AND COUNTY
CIVIL DEFENSE DIRECTOR—§5915.07 R.C.

SYLLABUS:

The office of township trustee is incompatible with that of county civil defense director appointed pursuant to Section 5915.07, Revised Code.

Columbus, Ohio, April 24, 1959

Hon. Robert E. Culbert, Prosecuting Attorney
Sandusky County, Fremont, Ohio

Dear Sir:

I have received your letter wherein you request my opinion in regard to the following question:

“In Sandusky County, Ohio recently there was formed ‘The Sandusky County Civil Defense Organization’ under the provisions of Section 5915.07 of the Revised Code of Ohio and the contract was entered into by practically all of the municipalities and townships within the county. Madison Township being one of the townships signing the contract.

“At the recent organizational meeting of the Executive Committee, under the terms of the contract, a civil defense director was appointed. The appointee is a qualified and acting trustee of Madison Township. The only question the undersigned has is whether or not the office of director of civil defense and the office of township trustee is compatible.

“For your further information, the director acts as such without compensation, but is allowed expenses. Under the contract the Executive Committee prepares the budget each year, however, the director is not a member of the Executive Committee.”

The pertinent part of Section 5915.07, Revised Code, under which the Sandusky County Civil Defense Organization was formed, reads as follows:

“The board of county commissioners of any county and the legislative authority of all or of a majority of the other political subdivisions, including the municipal corporation having the

largest population, within such county may *enter into an agreement* establishing a county-wide local organization for civil defense in accordance with such regulations as are promulgated by the governor. A director of civil defense who shall have the direct responsibility for the organization, administration, and operation of such county-wide local organization for civil defense shall be appointed in accordance with and shall be subject to the direction and control prescribed by the regulations promulgated by the governor.” (Emphasis added)

Section 5915.01 (F), Revised Code, defines township as a “political subdivision.” In Opinion No. 4705, Opinions of the Attorney General for 1955, page 8, it was stated that membership in a civil defense organization is in the nature of a public office.

Provisions for the payment of expenses of a county-wide civil defense organization formed under Section 5915.07, Revised Code, are contained in Section 5915.11, Revised Code, which reads in part:

“Each political subdivision may make appropriations for the payment of the expenses of its local organization for civil defense and for the payment of the expenses chargeable to such political subdivision by agreement or under regulations promulgated by the governor in any county wherein a county-wide civil defense organization has been established pursuant to Section 5915.07 of the Revised Code.”

In the case of *State ex rel. Attorney General v. Gebert*, 12 O.C.C. (N.S.) 274, it was stated at page 275:

“Offices are considered incompatible when one is subordinate, *or in any way a check upon the other*; or when it is physically impossible for one person to discharge the duties of both.”
(Emphasis added)

In Opinion No. 1661, Opinions of the Attorney General for 1958, it was stated that the office of a city councilman and that of a county civil defense director cannot be lawfully held simultaneously by the same person. In Opinion No. 2114, Opinions of the Attorney General for 1958, the office of mayor of a village was declared as being incompatible with that of county civil defense director appointed pursuant to Section 5915.06, Revised Code.

It appears that the facts in Opinion No. 2114, *supra*, are substantially analogous with those under consideration here, except that in that case a village mayor was appointed by the county commissioners as provided in

Section 5915.06, Revised Code, while here, the appointment of the township trustee was made under Section 5915.07, Revised Code, "in accordance with * * * the regulations promulgated by the governor." The applicable regulation promulgated by the governor is Section 5, d, of Ohio Civil Defense Corps Regulations, the pertinent part of which reads:

"Such regional local Civil Defense organization or Authority shall have a Director of Civil Defense, who shall be appointed *in accordance with the terms and conditions set forth in such agreement in writing.*" (Emphasis added)

The examination of the opinion dealing with a village mayor as head of a county civil defense organization shows that the incompatibility between the two positions was deemed to be grounded in the provisions of Section 5915.11, Revised Code, in juxtaposition with Sections 5705.27, 5705.28 and 5705.32, Revised Code, which deal with the submission of the budgets of various political subdivisions of a county to the county budget commission for its approval. Referring specifically to Section 5705.32, in Opinion No. 2114, it was said:

"Should the budget commission be inclined to make certain adjustments in the village budget as provided in this section, it is impossible to suppose that the village mayor would not be keenly interested in the matter. Accordingly, should a reduction be contemplated by the commission, it could well be that the mayor would wish to appear before the commission to defend the estimates submitted. In this situation it is apparent that the same person will have an interest in the budget of the village on the one hand and in the appropriation for the local civil defense organization on the other. Even though the civil defense director has no authorization to appear before the budget commission to defend his budget, the mere fact that his appropriation will come, if at all, from a subdivision which may well be competing for funds with the village which this same person serves as mayor, makes the two offices clearly inconsistent and repugnant and therefore incompatible."

This reasoning appears to be correct and is, I believe applicable with equal force to the situation under consideration. Nor do I think that the fact that the civil defense director here serves without compensation, but is allowed expense, presumably under the terms of the agreement whereby the civil defense organization was created, requires a different conclusion. On the contrary, it is clear that the same person who as township trustee participated in the drafting of the agreement containing

the provisions for such expenses, or in any event was authorized so to do, could conceivably benefit from a liberal allowance for such expenses as county civil defense director. Thus the inconsistency between the two offices becomes even more pronounced.

It is therefore my opinion and I advise you that the office of township trustee is incompatible with that of county civil defense director appointed pursuant to Section 5915.07, Revised Code.

Respectfully,

MARK McELROY

Attorney General