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SYLLABUS:

1. The offices of probation officer and deputy sheriff (either on a part-time or full-time basis) are compatible provided that it is physically possible for one person to perform the duties of both offices.

2. The second branch of the syllabus of Opinion No. 1076, Opinions of the Attorney General for 1949, page 713, is hereby overruled.

Columbus, Ohio, September 5, 1963

Hon. John D. Sears, Jr.
Prosecuting Attorney
Crawford County
Bucyrus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I was under the impression that your office had rendered an opinion as to whether or not the position of Deputy Sheriff and Probation Officer of the Common Pleas Court are compatible or incompatible.

"I have made a careful search of the opinions that are in my office but I fail to find an opinion as to whether or not a Deputy Sheriff may also serve as Probation Officer of the Common Pleas Court.

"If your office has not rendered an opinion, I would respectfully request your opinion now as to whether or not a full-time Deputy Sheriff may also be Probation Officer and whether or not a part-time Deputy Sheriff may serve as Probation Officer of the Common Pleas Court."

There are two opinions by my predecessors in office which would seem to be dispositive of the inquiry which you present.

Opinion No. 633, Opinions of the Attorney General for 1913 (Vol. II), page 1439, deals with a situation which arose in Lake County wherein the sheriff of said county completed the bulk of work emanating from his office. The county commissioners did, however, set aside \$300 annually to compensate deputy sheriffs on a "piece work" basis for services rendered intermittently throughout the year. The question posed in that opinion is similar to the one at hand. The opinion continues as follows:

"From this I understand that the deputy sheriff is not on a salary either yearly or monthly, but is paid out of the \$300.00 allowance for work actually performed, or as it might be said, his payments are upon the piece price-plan. Under these circumstances, it is inconceivable how there can be any incompatibility between the two offices, nor evasion of the salary law.

"You call attention to the opinion of my predecessor, Mr. Denman, found on page 446 of Opinions of 1910, in which it is held that a sheriff may not act as a probation officer, with which opinion I fully concur, not only for the reasons stated in the opinion, but also because of the fact that the sheriff is upon a salary compensating him for his time, and he would not be authorized to devote a portion thereof to the duties of probation officer.

"However, none of the reasons applicable to sheriffs apply to deputies whose employment and compensation are, as stated in your letter. I am therefore of the opinion, that deputy sheriffs appointed and paid, and whose time is only partially taken up, as you state, are eligible to appointment as probation officers where the duties of both will not require all the time of the appointee, are limited, as you state, and are not conflicting.

"This opinion, it must be understood, applies only to deputy sheriffs under the conditions you state and must not be construed as applying to deputy sheriffs generally, nor to deputy sheriffs under a regular salary, whose entire time is covered by this compensation."

Although this opinion deals with a limited set of facts and involves a probation officer appointed by the probate court, it would seem reasonable that the underlying principle of compatibility would be the same for a probation officer of the Common Pleas

Court and would therefore encompass your case of the part-time deputy sheriff. The final sentence of the syllabus of the above quoted opinion states that: "This does not apply to deputy sheriffs under a regular salary whose entire time is covered by his compensation."

Opinion No. 663, Opinions of the Attorney General for 1917 (Vol. II), page 1804, cited with approval the syllabus from the 1913 opinion. The concluding comments of Opinion No. 663, however, indicated that the writer disagreed with the proposition regarding the status of the full-time deputy sheriff on a regular salary as was expressed in the quotation cited in the preceding paragraph.

"My attention has been called to the fact that the duties of deputy sheriffs in some of the smaller counties of the state, *including those deputies serving on a regular salary*, are such as to allow them sufficient time to also act as probation officer, and where this can be done without conflicting with the services of the deputy as such deputy sheriff, and such deputy will act without salary, I can see no reason why the same should not be allowed and the actual expense of such deputy, when acting as such probation officer, paid as in other cases."

(Emphasis added)

The Italicized phrase serves to allow a full-time deputy sheriff, i.e. one on a regular salary, to execute the duties of the probation officer as long as such duties do not interfere with his obligation as a deputy. Further reading of the opinion quoted uncovers the provision that such full-time deputy may not be compensated for his work as probation officer. With this conclusion, I am in disagreement.

The case of *State ex rel. F. H. Wolf v. Shaffer*, 18 O. D. 303, and Opinion No. 3432, Opinions of the Attorney General for 1931 (Vol. II), page 977, discussed the compatibility of a deputy sheriff and court bailiff, and that of probation officer and county attendance officer respectively. Albeit the offices involved in each separate instance are dissimilar to those in question, nevertheless the problem encountered therein of compensating one individual for two jobs is analogous to the situation at hand. Following the reasoning found in these two instances, it is my opinion that the individual who performs the function of both deputy sheriff and probation officer may receive compensation for both positions provided that:

(a) time spent in each job is compensated for according to the salary schedule of that specific employment; and, (b) the individual shall only be compensated on the basis of the actual time spent performing functions particular to each job and shall not be twice compensated for the same services. In other words, a person who works six hours as probation officer and two hours as deputy sheriff would be compensated at the going rate for six hours as probation officer and two hours as deputy sheriff, but should not receive payment reflecting eight hours work in one capacity or the other.

I am not unmindful of Opinion No. 1076, Opinions of the Attorney General for 1949, page 713. The second branch of the syllabus thereof states:

“2. A deputy sheriff employed full time, as such, may not lawfully be employed as a probation officer of the juvenile court. (Opinions of Attorney General for 1913, Opinion No. 633, page 1439, approved and followed.)”

My predecessor purports to base his findings on the reasoning found in the 1913 and 1917 opinions, parts of which are quoted in this writing. However, it is my opinion that they fail to substantiate his conclusion since, as I have shown, the 1917 opinion modifies the 1913 opinion and allows a deputy sheriff to act as probation officer. Therefore, the second branch of the syllabus of Opinion No. 1076, Opinions of the Attorney General for 1949, page 713, is of no effect and is expressly overruled.

The 1913 and 1917 opinions deal with a stipulated set of facts and since your request letter does not present collateral materials concerning the duties and time available of the deputy sheriffs in question, further note must be made of the well settled common law rule of incompatibility. In the event that your particular situation differs in substantial degree from those presented within the opinions cited, your alternative is to refer to the rule of incompatibility as stated in *State ex rel., Attorney General v. Gebert*, 12 C. C. (N. S.) 274. This rule states:

“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.”

If your particular circumstances may be affirmatively reconciled with this rule, then the offices are compatible.

In conclusion, it is my opinion and you are accordingly advised that the offices of probation officer and deputy sheriff (either on a part-time or full-time basis) are compatible, provided that, it is physically possible for one person to perform the duties of both offices, and, that the individual shall not be twice compensated for the same time period, but shall be paid according to the work done pursuant to each job and at the rate provided for in the salary schedule of each position.

Respectfully,
WILLIAM B. SAXBE
Attorney General