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COMPATIBILITY—CLERK, BOARD OF ELECTIONS—MUNICIPAL CIVIL SERVICE COMMISSION MEMBER — PARTY EXECUTIVE COMMITTEEMAN—COMPATIBLE POSITIONS.

SYLLABUS:

A member of a municipal civil service commission may also be a clerk of board of elections and may serve also as a party executive committeeman.

Columbus, Ohio, March 16, 1959

Hon. Roy J. Gilliland, Prosecuting Attorney  
Jackson County, Jackson, Ohio

Dear Sir:

I have before me your request for my opinion as to whether the three positions of clerk of the board of elections, party executive committeeman

and member of a municipal civil service commission are compatible. The most important Ohio decision on the compatibility of public offices is *State of Ohio et al., Attorney General vs. Frank Gebert*, 12 C.C. (N.S.) 274, 275. In this case it was stated that :

“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.”

To start with the clerk of the board of elections, there certainly is no reason why he cannot serve as a party executive committeeman. Neither of the offices is subordinate nor is a check on the other, nor is it physically impossible for one person to perform both functions.

It would seem the post of clerk of the board of elections is also compatible with the position of member of the municipal civil service commission. In Opinion No. 839, Opinions of the Attorney General for 1914, p. 404, there is reference to possible inclusion of the restriction of present Section 143.02, Revised Code, relative to members of the state civil service commission serving in any other government positions, into Section 143.30, Revised Code, the municipal civil service commission statute. This point, however, is no longer important since the present statute does not contain the language of the former section which incorporated the state civil service commission provisions with the municipal service commission section. See Sections 486-3, 486-19, General Code. The positions are not checks upon one another since Section 143.08 (A) (2), Revised Code, specifically excludes election board employees from the classified service. Neither position is subordinate to nor a check upon the other, nor is it physically impossible to discharge the duties of both.

The remaining question is: Are the positions of member of the municipal civil service commission and party executive committeeman incompatible? These offices do not appear to be subordinate to one another, nor in any way a check upon one another, nor is it physically impossible to perform both. The argument that enforcement of Section 143.41, Revised Code, which forbids political activity of classified employees, is inconsistent with the function of a political executive committeeman must be considered. This argument loses validity when it is realized this would mean implying that a duty of a party executive committeeman is to sponsor nullification of Section 143.41, Revised Code. I do not believe that any such duty exists.

I conclude then that the offices of clerk of a county board of elections, party executive committeeman and member of a municipal civil service commission are compatible offices and may be held by one person.

Respectfully,

MARK McELROY

Attorney General