

OPINION NO. 89-016**Syllabus:**

The position of police chief of a city is compatible with the position of part-time investigator for a county coroner, provided that it is physically possible for one person to hold both positions and that the person who holds both positions is not called upon by the coroner to investigate a death within the jurisdiction of the police chief of the city.

To: Robert L. Herron, Columbiana County Prosecuting Attorney, Lisbon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 22, 1989

I have before me your request for my opinion on whether the positions of city police chief and part-time investigator for the county coroner are compatible. East Palestine, the city which employs the police chief, is located within Columbiana County, the county that the coroner serves.

In determining whether two positions are compatible, I must consider the following seven factors:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

1979 Op. Att'y Gen. No. 79-111 at 2-367 to 2-368.

The sixth and seventh questions of the compatibility analysis are of local concern and I assume, for purposes of this opinion, that there are no departmental regulations, charter provisions, or ordinances which limit the holding of outside employment by a city police chief or part-time investigator for the county coroner.

Question number one asks whether either position is a classified employment within the terms of R.C. 124.57, which prohibits classified employees or officers from taking part in political activity other than voting or expressing their political opinions. Coroner's investigators are appointed by the coroner under the authority of R.C. 313.05, which provides in relevant part that, "[i]n counties where a coroner's office, laboratory, and a county morgue [are] maintained, the coroner may appoint clerks, stenographers, custodians, and investigators, and shall define their duties." I have been advised that the position of part-time investigator in the Columbiana County coroner's office is an unclassified position. I will assume, therefore, for purposes of this opinion that this position is appropriately unclassified under R.C. 124.11.

I also have been advised that East Palestine is a non-charter city. Pursuant to R.C. 124.11(A)(3), the city police chief of a non-charter city is a classified position and accordingly, is subject to the limitations imposed by R.C. 124.57. The Ohio Supreme Court has ruled that this statutory bar to political activity by classified personnel prohibits partisan political activity. *Heidtman v. City of Shaker Heights*, 163 Ohio St. 109, 126 N.E.2d 138 (1955). The position of coroner is an elected office. R.C. 313.01. However, merely being in the employ of an elected official, such as the coroner, does not constitute political activity. See 1984 Op. Att'y Gen. No. 84-070 at 2-225 n. 2 (appointment as deputy sheriff did not in itself constitute political activity under R.C. 124.57). I conclude, therefore, that employment as a part-time investigator for a county coroner is not a political activity. Thus, R.C. 124.57 does not prohibit one person from holding the position of city police chief and coroner's investigator.

Question two asks whether the empowering statutes of either position limit the outside employment permissible. R.C. 313.05 authorizes the coroner to appoint investigators and other assistants to be compensated from the county treasury. R.C. 313.05 does not statutorily limit outside employment for personnel employed by the coroner. The authorizing legislation for the city police chief, R.C. 737.06, is also silent on the issue of outside employment. No other statutes of which I am aware limit the holder of either position from being otherwise employed. Therefore, I conclude that the empowering statutes do not limit outside employment for the positions involved.

Question three asks whether one office is subordinate to, or a check upon, the other. The city police chief is paid by the municipality, which is empowered to maintain a police department under R.C. 715.05. See 1933 Op. Att'y Gen. No. 884, vol. I, p. 790 (claim by the police against the municipality for their salaries). Pursuant to R.C. 737.06, the police chief is specifically empowered to control the operation of his department "under such general rules and regulations as the director of public safety prescribes". Pursuant to R.C. 313.05, a part-time investigator for the county coroner is to perform such duties as prescribed by the coroner and is paid from the county treasury. Thus a city police chief and an investigator for a county coroner serve different masters and are not bound to the decisions of one another. Neither position controls the other directly.

Further, the two offices are not linked in a manner that would make one office a check upon the other. The police chief and county coroner are obligated to work together in certain situations. R.C. 313.11 (coroner has control over the area near the body at the scene of an unexplained death); R.C. 313.12 (law enforcement agent who, through his duties, obtains knowledge of a death by violent or suspicious means, must immediately notify the office of the coroner of the known facts); R.C. 313.11, R.C. 313.12 (every person, including law enforcement personnel, must receive a permissive order from the coroner before removing or disturbing the body or articles found nearby); R.C. 313.13 (coroner or his deputy takes charge of a dead body and determines whether to conduct an autopsy); R.C. 313.14 (coroner must deliver firearms found on or near the body to a local law enforcement agency); R.C. 313.15 (mandatory consultation between coroner and police chief in determining responsibility for death); 1988 Op. Att'y Gen. No. 88-035; 1980 Op. Att'y Gen. No. 80-091. These contacts by law enforcement officers, however, are not with the coroner's investigator, but with the coroner himself. Both the coroner's investigator and the chief would be subordinate to the coroner: the investigator as an employee under R.C. 313.05, and the police chief pursuant to R.C. 313.11 and R.C. 313.13. Neither coroner's investigator nor police chief would be subordinate to the other. I conclude, therefore, that a police chief and an investigator for the coroner are not subordinate to, or in any way a check upon, the other.

The fourth question asks if it is physically possible for one person to discharge the duties of both positions. I have been informed that the chief of police of the municipality in question is on call twenty-four hours a day. Several early opinions found that any other office would be incompatible with that of chief of police, as it requires "constant readiness" at all times. 1922 Op. Att'y Gen. No. 2874, vol. I, p. 108; 1913 Op. Att'y Gen. No. 656, vol. I, p. 421. See also 1957 Op. Att'y Gen. No. 199, p. 61; 1928 Op. Att'y Gen. No. 2013, vol. II, p. 991. Subsequent opinions, however, have permitted a police chief to engage in other activities. See 1976 Op. Att'y Gen. No. 76-027 (the position of police chief of a village is not

inherently incompatible with the police chief of a township police district, assuming that one person is physically capable of serving in both capacities at the same time); 1964 Op. Att'y Gen. No. 1516, p. 2-409 (the position of chief of police is compatible with the position of deputy clerk of courts for the purpose of accepting bonds for the county court).

Furthermore, as I noted in 1987 Op. Att'y Gen. No. 87-002, recent opinions have indicated that the issue of physical impossibility, which must take into account the time demands of each position, is a factual determination that, as a general matter, can best be resolved by the interested parties. See, e.g., Op. No. 79-111. While in 1986 Op. Att'y Gen. No. 86-007, I found two positions incompatible for several reasons, including physical impossibility, I noted, "[t]he question of physical impossibility is, as a general matter, left to those involved on the local level, since such individuals have a more accurate idea of the demands placed on each officeholder." Op. No. 86-007 at 2-32. But cf. 1985 Op. Att'y Gen. No. 85-042 (syllabus, paragraph two)("[a] person who serves as a county dog warden on a full time basis and who is on call twenty-four hours a day, may not serve as a part time village police chief").

In the situation before us, I am advised that the coroner calls on the part-time investigator *subject to his availability* and with the understanding that he may be called away at any time if police duties arise. As R.C. 313.05 authorizes the coroner to appoint investigators and define their duties, it is within the coroner's discretion to set the hours and functions of these investigators. I am not authorized to exercise on behalf of another officer the discretion that has been bestowed by statute on that officer. See generally 1985 Op. Att'y Gen. No. 85-007; 1984 Op. Att'y Gen. No. 84-098; 1984 Op. Att'y Gen. No. 84-067. Further, it is inappropriate for me to use the opinion-rendering function to make findings of fact or determinations as to the rights of particular individuals. Op. No. 87-082. I leave the question of physical impossibility, therefore, to those who are familiar with the facts of this particular case.

Question five asks if there is a conflict of interest between the two positions. One may not simultaneously hold two positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public. Op. No. 85-042; 1985 Op. Att'y Gen. No. 85-021; Op. No. 79-111. It is necessary, therefore, to determine whether an individual acting as both city police chief and coroner's investigator would be subject to such conflicting interests. In the past, I have found that a conflict of interest may result where one person holding two law enforcement positions is subject to different law enforcement standards, policies and techniques. See, e.g., Op. No. 86-007 (a person simultaneously serving as a parole officer and a village police chief would be subject to conflicting duties as he would be subject to two different statutory law enforcement standards); Op. No. 85-021. In Op. No. 80-091, however, my predecessor determined that a county coroner's duty to determine cause of death, occurring under circumstances described in R.C. 313.12, does not qualify him as a "law enforcement officer." Furthermore, the coroner's primary duty is to determine the medical cause of death, the mode of death and the manner of death. "[C]oroners do not have the authority to determine whether the law has been broken, or to determine that a particular person is guilty of violating the law...." Op. No. 88-035 at 2-163. See also *State v. Cousin*, 5 Ohio App. 3d 32, 449 N.E.2d 32 (Seneca County 1982); 1969 Op. Att'y Gen. No. 69-036 at 2-63. The duties of the coroner and his investigators are thus performed from a different perspective with different standards than that of a law enforcement officer. It might be argued that this distinction would present a conflict to an individual serving as both a police officer and a coroner's investigator. It is the coroner, however, and not the investigator who gives directions and makes decisions in an investigation under R.C. 313.15. The investigator merely works at the direction of the coroner.

A conflict of interest might arise, however, if the coroner were to send the part-time investigator to investigate a death in the jurisdiction in which he is chief of police. As previously mentioned, the duties of a coroner's investigator and a law enforcement officer may overlap. Op. No. 88-035. The duties may be so similar that an individual investigating a death in an area in which he has jurisdiction as police chief would be unable to determine whether an action was taken on behalf of

the municipality or the county coroner, and therefore would be unable to determine which entity's budget should be billed for compensation or any incidental costs resulting from the investigation. In addition, a clear conflict would arise in any investigation in which a death involves the police in that jurisdiction. See 1969 Op. Att'y Gen. No. 69-104 (offices of county coroner and superintendent of a state hospital in the same county are incompatible, since a person holding both offices might be called upon to investigate his own activity in connection with a death occurring within the institution). Therefore, I find that the coroner must refrain from utilizing the police chief as his investigator when the matter to be investigated is within the jurisdiction of the police chief of the city.

As a final matter, I note that where one position serves as a budgetary check upon the other, the positions are incompatible. Op. No. 79-111. See 1981 Op. Att'y Gen. 81-009 (positions of special deputy and county commissioner are incompatible); 1981 Op. Att'y Gen. No. 81-004 (positions of city auditor and volunteer firefighter for the city are incompatible). In the situation referred to in your request neither position provides a budgetary check upon the other. I find, accordingly, that an individual who serves as a city police chief is not barred by conflict of interest from accepting employment as a part-time investigator for the county coroner, provided that the individual does not investigate matters within the jurisdiction of the police chief of the city.

Therefore, it is my opinion, and you are advised, that the position of police chief of a city is compatible with the position of part-time investigator for a county coroner, provided that it is physically possible for one person to hold both positions and that the person who holds both positions is not called upon by the coroner to investigate a death within the jurisdiction of the police chief of the city.