

**OPINION NO. 95-020**

**Syllabus:**

Employees of the county sheriff who serve as dispatchers may not be appointed as deputy clerks of a municipal court located within the county served by the county sheriff.

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**To: Paul E. Howell, Mercer County Prosecuting Attorney, Celina, Ohio**  
**By: Betty D. Montgomery, Attorney General, August 29, 1995**

You have requested an opinion concerning whether the employees of the county sheriff who serve as dispatchers may be appointed as deputy clerks of a municipal court. You have indicated that the municipal court is located within the county served by the county sheriff.

I note initially that 1984 Op. Att'y Gen. No. 84-028 and 1961 Op. Att'y Gen. No. 2066, p. 132 have determined that a clerk of a county or municipal court may not appoint deputy sheriffs of the county in which the court is located as deputy clerks of the court. These opinions reasoned that insofar as the clerk of a county or municipal court may call upon deputy sheriffs to serve criminal processes, the deputy sheriffs are subordinate to and dependent upon the clerks of county and municipal courts. Op. No. 84-028 at 2-83; 1961 Op. No. 2066 at 134. In addition, a deputy sheriff who serves as a deputy clerk of court would be subject to divided loyalties if he were called upon to investigate any irregularities arising in the handling of funds collected by the clerk or deputy clerks. Op. No. 84-028 at 2-83; 1961 Op. No. 2066 at 134.<sup>1</sup>

These opinions thus recognized that in order to maintain the credibility and integrity of the judicial branch of government it is essential that the judicial functions be performed independently of the law enforcement functions. Op. No. 84-028 at 2-83; 1961 Op. No. 2066 at 136. As stated in 1988 Op. Att'y Gen. No. 88-093 at 2-448 and 2-449, which concluded that a clerk of a municipal court may not appoint a municipal police officer who serves within the jurisdiction of the court to the position of deputy municipal court clerk:

An element of concern in this case, as it was in 1961 Op. No. 2066 and Op. No. 84-028, is the need to maintain a division between those who are empowered with law enforcement and investigation on the one side, and the judiciary on the other. There are compelling reasons why our system of law requires law enforcement functions to be performed independently of judicial functions. *See, e.g.*, Op. No. 84-028 [at 2-83] (quoting 1961 Op. No. 2066 at 136) ("[t]hese positions [county sheriff and county clerk of courts] are clearly designed to separate the function of law enforcement from the ministerial duties of accounting not only for documents served by the sheriff but bail posted to secure appearance and fines levied by the courts. The separation of such duties are [*sic*] well founded and thus the two cannot be joined for the sake of expediency"). Although the potential conflict involved in verifying oaths may appear to be minimal, the independence of the judicial function vis-a-vis the law enforcement function is at issue. A deputy municipal court clerk would be faced with a conflict of loyalties if he served also as a municipal police officer for a municipality within the jurisdiction of the court, since he would be serving masters with conflicting duties. The inevitable result of allowing a police officer (or a sheriff as in previous opinions) to become a deputy clerk would be to

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<sup>1</sup> You have stated that the county sheriff has not deputized the dispatchers pursuant to R.C. 311.04. The dispatchers thus are not required to serve criminal processes or investigate improprieties in the clerk's office. Therefore, the conflicts of interest described in 1984 Op. Att'y Gen. No. 84-028 and 1961 Op. Att'y Gen. No. 2066, p. 132 that prohibit deputy sheriffs from serving simultaneously as deputy clerks of a municipal court do not prohibit dispatchers who are not deputized by the county sheriff from serving simultaneously as deputy clerks of a municipal court.

jeopardize the independence of the judicial function. (Citations and footnote omitted.)

Accordingly, an individual may not be appointed as a deputy clerk of a municipal court if he would be subject to influences that jeopardize the independence of the judicial function. *See generally* 1985 Op. Att'y Gen. No. 85-042 at 2-150 ("[o]ne person may not simultaneously hold two public 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").

I turn now to your specific question. An examination of the duties of the positions about which you ask discloses that an individual who serves simultaneously as a dispatcher in the county sheriff's office and deputy municipal court clerk would be subject to influences that jeopardize the independence of the judicial function. Pursuant to R.C. 2935.03(A), the county sheriff and his deputies are required to arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the county, an ordinance of a municipal corporation. After making a warrantless arrest for a violation of a municipal ordinance, a county sheriff or deputy sheriff is required to take the person before the municipal court having jurisdiction of the offense and file or cause to be filed an affidavit describing the offense for which the person was arrested. R.C. 2935.05; R. Crim. P. 4(E)(2). Upon the filing of the affidavit required by R.C. 2935.05, a "judge, clerk, or magistrate shall forthwith issue a warrant to the [sheriff or deputy sheriff] making the arrest." R.C. 2935.08; *accord* R. Crim. P. 4(A)(1). "All further detention and further proceedings shall be pursuant to such affidavit...and warrant." R.C. 2935.08.

It is thus conceivable that a situation could arise in which a deputy municipal court clerk may be required to determine whether the county sheriff or a deputy sheriff had probable cause to make a warrantless arrest. *See generally* 1991 Op. Att'y Gen. No. 91-047 at 2-247 ("[t]he plain language of R.C. 2935.08 and R. Crim. P. 4 discloses that the General Assembly and the Ohio Supreme Court intended that individuals arrested without a warrant receive a post-arrest determination to ascertain whether the arresting officer had probable cause to make the arrest"). If the county sheriff or a deputy sheriff bring a person arrested without a warrant before a deputy municipal court clerk who is employed by the county sheriff as a dispatcher, the deputy clerk's ability to exercise clear and independent judgment in the matter could be called into question because it could be difficult for the deputy clerk to set aside his loyalty to his employer, the county sheriff. Moreover, the deputy clerk may be predisposed to find probable cause for fear of reprisals, in his position of dispatcher, by the county sheriff. Accordingly, when an individual simultaneously holds the positions of deputy municipal court clerk and dispatcher in the county sheriff's office, an impermissible conflict of interest exists because the individual is subject to influences that jeopardize the independence of the judicial function.

It is, therefore, my opinion, and you are advised that employees of the county sheriff who serve as dispatchers may not be appointed as deputy clerks of a municipal court located within the county served by the county sheriff.