

3410.

COMPATIBLE OFFICE — PROBATION OFFICER, JUVENILE COURT AND RELIEF ADMINISTRATOR OF CITY — MAY BE HELD BY ONE PERSON AT SAME TIME, UNLESS PHYSICALLY IMPOSSIBLE TO FAITHFULLY AND EFFICIENTLY DISCHARGE DUTIES OF BOTH POSITIONS.

SYLLABUS:

The positions of probation officer of the juvenile court and relief administrator of a city are not in themselves incompatible and both positions may be held by one person at the same time, unless it is physically impossible for such person to faithfully and efficiently discharge the duties of both positions.

Columbus, Ohio, February 10, 1941.

Hon. Wm. G. Batchelder, Jr., Prosecuting Attorney,
Medina, Ohio.

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you request an opinion upon the following:

“Our Probate Judge-Elect is considering appointing as County Probation Officer (our Probate Judge being also Juvenile Court Judge) a man who holds, at the present time, the position of Relief Administrator of Wadsworth City; the latter individual is appointed by our County Commissioners, as relief in Wadsworth City is not decentralized.

In view of the fact that neither the job of Relief Administrator of Wadsworth City nor that of County Probation Officer is a full time job, and the performance of the duties of neither would interfere with the performance of the duties of the other, we would like to have your opinion as to whether or not the same individual can hold these two positions at the same time; i.e., whether the positions are incompatible.”

Section 1639-18, General Code, reads in part as follows:

“The judge may appoint a chief probation officer, and as many probation officers, stenographers, bailiffs and other employees as may be necessary. Such appointees shall receive such compensation and expenses as the judge shall determine, and shall serve during the pleasure of the judge.

The compensation of the probation officers and other em-

ployees shall be paid in semi-monthly installments by the county treasurer from the county treasury, upon the warrant of the county auditor, certified to by the judge of the court.

The chief probation officer, the probation officers and other employees appointed to serve under the supervision of the chief probation officer, shall constitute the probation department of the court. * * *

The above section prescribes the method of appointment and compensation of the probation officer and other employees.

Section 1639-19, General Code, in so far as the duties and powers of the probation department are concerned, reads in part as follows:

"The chief probation officer, under the direction of the judge, shall have charge of the work of the probation department. The probation department shall make such investigations as the court may direct, keep a written record of such investigations and submit the same to the judge or deal with them as he may direct. The department shall furnish to any person placed on probation a statement of the conditions of probation and shall instruct him regarding them. The department shall keep informed concerning the conduct and condition of each person under its provision and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and to bring about improvements in their conduct and condition. The department shall keep full records of its work; shall keep accurate and complete accounts of money collected from persons under its supervision, shall give receipts therefor and shall make reports thereon as the judge may direct. * * *

Section 3391-7, General Code, reads as follows:

"Each local relief authority may appoint a relief director, who shall be exempt from the provisions of sections 486-1 to 486-30, both inclusive, of the General Code, and such additional employes as it may deem necessary, and prescribe their duties and authority. Such director and employes shall not be related, either by affinity or consanguinity, to the county commissioners, or county auditor. In the making of such appointments no person shall be discriminated against because he may or may not have attended a college or studied social administration or because he may or may not have been connected with any relief agency or other organization."

The above section sets forth the manner in which the relief director is appointed and how his duties and authority are derived.

The pertinent statutes do not expressly preclude one and the same person from simultaneously holding the positions in question. Therefore,

it becomes necessary to determine whether or not these positions are incompatible by reason of the common law rule of incompatibility. A good definition of the common law test of incompatibility is found in 46 C.J., pages 941 and 942, as follows:

“At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But where the functions of two offices are inconsistent, they are regarded as incompatible.”

Another definition of the common law rule of incompatibility to be found in Ohio is the one stated by the court in *State, ex rel. vs. Gebert*, 12 O.C.C. (N.S.) 274, at page 275, as follows:

“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.*” (Emphasis mine.)

It may now be considered whether or not it would be physically possible for the same person to discharge fully and efficiently the duties of both positions at the same time. This can not be answered in such a way as to be applicable to all the counties in the State of Ohio. In the small counties it would be physically possible for the same person to discharge efficiently the duties of both positions at the same time, but in the large counties it would be impossible for one person so to do.

The question is one of fact to be determined by the needs and requirements of each county. If, as a matter of fact, it is possible in Medina County for the same person to discharge fully and efficiently the duties of both positions at the same time, then I can see no legal objection to the same person holding both positions at the same time. If it is determined that it is physically impossible for the same person to discharge efficiently the duties of both positions at the same time, then under the rules set forth above, the two positions are to be considered incompatible and may not be held by one person at the same time.

It is, therefore, my opinion in answer to your question that the positions of probation officer of the juvenile court and relief administrator of a city are not in themselves incompatible and both positions may be held by one person at the same time, unless it is physically impossible for such person to faithfully and efficiently discharge the duties of both positions.

Respectfully,

THOMAS J. HERBERT,
Attorney General.