

alters the situation, as it simply authorizes the Treasurer of State and Auditor of State to arrange for expenditures and making changes during the progress of the fair, and all of such transactions are to be included within the regular appropriation made for the purpose of operating the fair.

Respectfully,
C. C. CRABBE,
Attorney-General.

3717.

OFFICES COMPATIBLE—DEPUTY CLERK OF COURTS MAY ACT AS
STENOGRAPHER TO PROSECUTING ATTORNEY.

SYLLABUS:

A deputy clerk of courts may act as stenographer to the prosecuting attorney when the same can be done without in some degree neglecting the duties of the other position.

COLUMBUS, OHIO, October 16, 1926.

HON. H. O. MCGONAGLE, *Prosecuting Attorney, McConnelville, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"In this county it is difficult to obtain persons with suitable qualifications to act as stenographer and clerks in the various county offices, especially is this true in obtaining stenographers because of the fact that the allowances made in this little county are so small that competent persons will not accept employment or appointment at the salaries allowed except in cases where such person is otherwise obliged to reside here. In my own case I have been without a stenographer since last April until the 20th day of September when I appointed one under the allowance made by the court at the beginning of the year, and she is appointed at the salary of \$75.00 from now until the first of the year.

In the case of the Clerk of Courts his year's allowance for deputy hire which was small is consumed except about \$75.00, he has been without a deputy for some time and is much in need of the services of a clerk who can make record on the typewriter, but of course is unable to find anyone who will give their time to his office for the allowance paid. The stenographer in my office will have sufficient time to do this extra work for the clerk of courts, the two offices being close together and in same building, her performing both duties would in no way lessen her effectiveness in either positions. The question is therefore:

May the same person who is now duly appointed as stenographer in the prosecuting attorney's office accept appointment as deputy clerk until the first of the year, or longer, and receive the small compensation as such from both offices?

One may readily see that situated as we are, it is a saving to the county and at the same time will give one person a better salary, this arrangement is very much desired by both clerk and myself if he may legally pay such salary as above explained. Under the provisions of Section 2871 G. C. I find no provisions for the appointment by the clerk of other than a deputy and I am doubtful about the provision of Section 2981 G. C. changing that construction. However, the only question as it appears to me is whether or not the same person may hold both positions and legally draw the allowance therefor. Your opinion of the matter will be very much appreciated."

I can find no provision of the statute expressly prohibiting a deputy clerk of courts from being employed in the capacity of stenographer to the prosecuting attorney.

The common law rule of incompatibility as stated by the Circuit Court in the case of *State ex rel. vs. Gebert*, 12 C. C. (N. S.) 274, is 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.”

From the above it will be seen that no person can hold two or more positions unless the duties of the several positions can be properly filled by persons holding the same. Also that no person under any condition can hold two positions when one is subordinate to or in any way a check upon the other, unless specifically authorized by statute.

I know of no way in which either of the offices mentioned in your communication would be subordinate to or a check upon the other, and if as set out in your communication the positions can both be filled by one person without in some degree neglecting the duties of the other, I can see no reason why the two positions mentioned may not be held by the same person.

You are therefore advised that a deputy clerk of courts may act as stenographer to the prosecuting attorney when the same can be done without in some degree neglecting the duties of the other position.

Respectfully,
C. C. CRABBE,
Attorney-General.

3718.

BOARDS OF EDUCATION—TERMS OF CONTRACTS FOR FURNISHING TEXT BOOKS DISCUSSED.

SYLLABUS:

Notwithstanding boards of education contract with local retail dealers to furnish school text books as provided by sections 7714 and 7715 G. C., such boards would still have authority to pay the transportation on such books, but if so agreed under the terms of such contract, same shall be paid by the local dealer. However, when such transportation charges are paid by the local board, same cannot be added to the cost of the books when purchased by the pupils, for the reason that such text books must always be sold to the pupils at the price paid the publisher and not to exceed ten per cent added.

COLUMBUS, OHIO, October 18, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of recent date in which you request my formal opinion on the following inquiry:

“Section 7714 G. C., as amended 111 O. L. 404, requires that boards of education in the handling of text books must pay all charges for the transportation of the books out of the school contingent fund, and Section 7715 G. C. provides that such books must be sold to the pupils of school age in the district, at the price paid the publisher, and not to exceed ten per cent therefor added. Said Section 7715 G. C. further provides that boards of education also may contract with local retail dealers to furnish such books at prices above specified.