

Note from the Attorney General's Office:

1964 Op. Att'y Gen. No. 64-1611 was overruled
by 2006 Op. Att'y Gen. No. 2006-012.

OPINION NO. 1611

Syllabus:

The positions of county treasurer and that of member of the soldiers relief commission are not incompatible, unless it is physically impossible for one person to discharge the duties of both.

To: William H. Conner, Hardin County Pros. Atty., Kenton, Ohio
By: William B. Saxbe, Attorney General, December 29, 1964

I am in receipt of your request in which you ask whether the office of county treasurer is compatible with the position of a member of the soldiers relief commission.

A member of the soldiers relief commission carries out certain functions relating to the relief of indigent veterans and their dependents, which functions are fully set out in Sections 5901.02 to 5901.15, Revised Code. Such position is not a fulltime job (Opinions of the Attorney General for 1952, Opinion No. 1401), and there is no statutory prohibition against a commission member holding another position.

The county treasurer's functions are set out in Chapter 321, Revised Code. The treasurer shall, among other things, keep an account of all moneys received and disbursed by him, (Section 321.07, Revised Code) issue a daily statement to the county auditor relating to such account (Section 321.09, Revised Code) and make a statement to the county auditor at the time of closing the books at the end of each collection of taxes (Section 321.10, Revised Code). There is no specific statutory prohibition against the county treasurer holding another job.

As there are no statutory restrictions relating to the positions, the question is whether the positions are compatible at common law. A good statement of the test involved is found in State, ex rel. v. Gebert, 12 C.C. (N.S.), 274, wherein it is stated:

"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."

The soldiers relief commission, under Section 5901.11, Revised Code, determines the probable amount necessary for its relief activities and certifies such amount to the board of county commissioners for the necessary levy, not to exceed five-tenths of a mill per dollar on the property of the county.

While a member of the soldiers relief commission who is also county treasurer is, because of his latter office, a

member of the budget commission (Section 5705.27, Revised Code), Section 5705.05, Revised Code, provides in part:

*** Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include:

*** *** ***

"(E) In the case of counties, the amounts necessary for the maintenance, operation, and repair of public buildings, for the relief and support of the poor, for the relief of needy blind, for the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines, for mothers' pension fund, support of soil conservation districts, watershed conservancy districts, and for the county's share of the compensation paid judges;

*** *** ***"

It was concluded in Opinion No. 2114, Opinions of the Attorney General for 1930, as disclosed by the syllabus:

"1. The board of county commissioners is required, under the provisions of Section 5625-5, General Code, to include in the general levy, the amount which the soldiers' relief commission has, under Section 2936, General Code, certified to it as necessary for soldiers' relief, providing such amount does not require a levy in excess of one-half mill.

"2. The budget commission may not reduce the amount certified to be necessary for soldiers' relief unless such amount should require a levy in excess of the one-half mill limitation set forth in Section 2936, General Code.

"3. It is the mandatory duty of the county commissioners to appropriate the amount appearing in the budget for soldiers' relief."

To like effect Opinion No. 3435, Opinions of the Attorney General for 1948.

I am in accord with the conclusions expressed in the 1930 opinion and approved in the 1948 opinion and, therefore, can see no area of responsibility of the county treasurer, as member of the budget commission, which could cause him to act at the expense or burden of the soldiers relief commission. Nor am I able to visualize any other situation in which the two positions would present, to a single person holding them, divided interests.

The only question remaining to be answered is whether it is physically possible for one person to discharge the duties of both. This is a question of fact which can best be answered on the local level. If it is found that it is physically impossible for one person to hold the two jobs in question,

the positions are incompatible. Otherwise, the positions are compatible.

Accordingly, it is my opinion and you are hereby advised that the positions of county treasurer and that of member of the soldiers relief commission are not incompatible unless it is physically impossible for one person to discharge the duties of both.