

**OPINION NO. 66-138****Syllabus:**

The offices of a "part-time" village solicitor and acting county court judge are incompatible. If there are no persons possessing the qualifications required by Section 1907.061, Revised Code, who do not hold incompatible positions, then no appointment as acting county court judge can properly be made.

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**To: William E. Kessler, Miami County Pros. Atty., Troy, Ohio**  
**By: William B. Saxbe, Attorney General, August 18, 1966**

Your request for my opinion poses the following two questions:

- (1) Is the office of a "part-time" village solicitor compatible with the office of acting county court judge? and,
- (2) If the answer to the foregoing question is in the negative and there are no persons within the county court district possessing the qualifications for acting judge of the county court required by Section 1907.061, Revised Code, other than a part-time village solicitor, whom shall the Court of Common Pleas appoint to that position?

Since you do not state otherwise, I must, for the purpose of answering your request, assume that the part-time village solicitor in question is employed by a village located within the territorial jurisdiction of the county court to which you refer. Under these circumstances, I believe the reasoning of Opinion No. 1073, Opinions of the Attorney General for 1964, controls the answer to your first question since the question there presented involves essentially the same problem. The syllabus of that opinion reads as follows:

"The offices of 'part time' municipal court judge and 'part time' village solicitor are incompatible where the jurisdiction of the municipal court includes the village which the solicitor serves. (Opinion No. 781, Opinions of the Attorney General for 1964, approved and followed.)"

The only difference between the problem presented by your request and the problem answered in Opinion 1023, supra, is that in the latter a municipal court was concerned, while in your case it is a county court. The reasoning of that opinion, however, applies as well in either case. A situation raising the possibility of an individual sitting as a court in judgment on his own professional work or advice cannot be sanctioned. It is my opinion, therefore, that the reasoning of Opinion No. 1023, Opinions of the Attorney General for 1964, controls the answer to your first question and that the offices of "part-time" village solicitor and acting county court judge are incompatible and cannot properly be held by the same person.

As to your second question, Section 1907.061, Revised Code, relating to the appointment of an acting county court judge, reads in pertinent part as follows:

"When a judge of a county court is temporarily absent or incapacitated, a substitute having the qualifications required by section 1907.051 of the Revised Code shall be appointed by the common pleas court of such county to serve during the absence or incapacity of the incumbent." (Emphasis added)

Section 1907.051, Revised Code, referred to in this section, requires: (1) that either an elected or an appointed county court judge shall be a qualified elector and a resident of the county court district to which he is elected or appointed, (2) that he shall have been admitted to the practice of law in this state, and (3) that he, shall have been engaged in the practice of law in this state for at least one year.

From the language of the above two statutory provisions, I believe it is clear that, although the Court of Common Pleas is directed to appoint an acting county court judge in certain circumstances, it would not be proper for the Court of Common Pleas to appoint a person not qualified to hold the position.

It is therefore my opinion and you are hereby advised that the offices of a "part-time" village solicitor and acting county court judge are incompatible. Further, it is my opinion that if there are no persons possessing the qualifications required by Section 1907.-061, Revised Code, who do not hold incompatible positions, then no appointment as acting county court judge can properly be made.