

2102.

OFFICES INCOMPATIBLE—CLERK OF COURTS—COURT STENOGRAPHER.

The office of clerk of courts and the position of court stenographer are incompatible.

COLUMBUS, OHIO, May 24, 1921.

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

GENTLEMEN:—You request my written opinion upon the following questions:

“Is the office of clerk of courts and the position of court stenographer compatible?”

If not, can finding be made for recovery of an amount received by such officer as court stenographer?”

No provision of the statute has been found expressly prohibiting the clerk of courts from being employed in another capacity. It has, however, frequently been enunciated by the courts of this state, and by the Attorney-General, that whether or not two offices or positions are compatible or incompatible under the law, depends upon whether or not one office or position is a check upon the other, or whether it is physically impossible for one person to discharge the duties of both positions.

Without a general discussion of the various duties required of the clerk of courts, your attention is invited to section 1552 G. C. which requires said clerk to certify as to the correctness of the amount of compensation due the court stenographer for making transcripts of testimony when paid from the county fund. It will be observed that in the event the clerk of courts held both positions, he would be certifying to the correctness of his own bill. Clearly, under such circumstances, the performance of this duty would be inconsistent with the rule announced. It will be further observed that while the court stenographer is engaged in taking testimony in the trial of a case, there are duties to be performed by the clerk, such as swearing of witnesses, etc., which he could not well perform if he held both positions. Too, while engaged in taking testimony the clerk would not be at liberty to attend to numerous duties which those having business with his office have the right to expect him to perform without inconvenience to the public or to the court.

Section 1554 G. C. provides that the county commissioners shall provide a suitable room in the court house for the official stenographer. It would seem that the law contemplates an office for the clerk and also an office for the court stenographer, and in view of this situation it will be seen that it would be difficult for the clerk of courts to properly fill both positions.

In a former opinion of this department found in Vol. 1, 1911-12 Reports, page 128, it was said:

“The presumption of law is that one elected to an office, such as clerk of court, may ordinarily be found at the office.”

While it perhaps cannot be said to be wholly physically impossible for the clerk to perform the duties of both positions, it must be said that it does appear to be inconsistent with the proper efficiency required where one person attempts to fill both positions. In other words, it does appear that one

person cannot at all times perform the duties of one position without in some degree neglecting the duties of the other.

Therefore, without further consideration, it is the opinion of this department, for the reasons above pointed out, that the office of clerk of courts and the position of official court stenographer are incompatible under the law.

Coming to your second inquiry, it must be kept in view that there are no statutory inhibitions against such a practice as heretofore pointed out, and undoubtedly such occurrences are due to a mistake of law by those attempting to perform such service, as well as by those accepting the same. No doubt, services of material value were rendered to the court by the clerk of courts in such capacity in the case you have in mind. In this connection, you are referred to an opinion of the Attorney-General, 1915, page 758, where the then Attorney-General in advising you with reference to a very similar situation, said:

"I would not advise the making of any finding against a person who has been occupying the two offices simultaneously; but would suggest that your bureau notify such persons who are occupying the two offices simultaneously that either the one or the other should be given up."

Respectfully,
JOHN G. PRICE,
Attorney-General.

2103.

APPROVAL OF CORRECTED DEED FOR REAL ESTATE SITUATED IN
ATHENS TOWNSHIP, HARRISON COUNTY, OHIO.

COLUMBUS, OHIO, May 25, 1921.

HON. HARRY L. DAVIS, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—Mr. T. E. Johnson, through his attorney, Barclay W. Moore, Cadiz, Ohio, has made application, which said application is enclosed herewith, for a corrected deed to the following described premises:

Situate in the state of Ohio, county of Harrison, township of Athens, and being the northwest quarter of the southwest quarter of section sixteen (16), township nine (9), range five (5), Athens township, Harrison county, Ohio.

The application sets forth, in substance, that on December 8, 1868, the governor of Ohio conveyed to Joseph Brown a tract of land consisting of forty and one-half (40½) acres, which were described as follows:

Situate in Harrison county, Athens township, state of Ohio: Part of the southwest quarter of section 16, township 9, range 5, beginning at the southwest corner of the southwest quarter and running thence with the dividing line 81 perches; thence at right angles 80 perches; thence southwest 81 perches to a stake on the west boundary line of said section; thence with said boundary line 80 perches to the beginning, containing 40½ acres.