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1) TOWNSHIP TRUSTEES—NOT AUTHORIZED TO REGULAR TIME THE TOWNSHIP CLERK SHOULD DEVOTE TO DUTIES OF HIS OFFICE—2) OFFICE OF THE TOWNSHIP CLERK COMPATIBLE WITH POSITION OF FULL TIME EMPLOYEE OF COUNTY TREASURER, IF PHYSICALLY POSSIBLE—§§505., 507., R.C.

## SYLLABUS:

1. Chapters 505. and 507., Revised Code, do not authorize a board of township trustees to regulate the time the township clerk should devote to the duties of his office, and therefore, such a board cannot require the clerk to be present in his office certain day-time hours each week.

2. A person may at the same time occupy the office of township clerk and be a full time employee of the county treasurer, provided it is physically possible for such person to perform the duties of both such positions.

Columbus, Ohio, February 10, 1960

Hon. Calvin W. Hutchins, Prosecuting Attorney  
Ashtabula County, Jefferson, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“We have a Township, in the County of Ashtabula, which is adjacent to the City of Ashtabula, and is quite urban in nature, having a population of over 7000. As the result, this Township and the office of the Township Trustees and Clerk have been quite busy with the many problems of township government. Consequently, they have set up an office in which the Clerk has been present in the office, during the day, and has been available to the public.

“A new Clerk has been elected for this township, and the township trustees anticipate the new Clerk will not be present in the office to serve the public as in the past.

“We have been asked by the Township Trustees to obtain your opinion as to whether the Board of Township Trustees has authority to insist and require the Clerk to be present in the township office certain hours during the week days, and just what authority, if any, the Board of Township Trustees would have over the Clerk of the Board, who is an elected official. In addition, the

newly elected Clerk of the Township Trustees is also a full time employee of the County Treasurer. Previously, we advised the township trustees that a township Clerk and also an employee of the County Treasurer is a compatible position.

“The question then arises, if the Clerk is required to spend so many hours in the Township Office, as to whether or not the Clerk can physically carry on the duties of both offices, and who determines whether or not such person can physically carry out the duties of both offices.”

Your letter presents two questions which require a determination, namely :

(1) What authority, if any, does a board of township trustees have to regulate the duties of the township clerk and to fix the time he should devote to the duties of his office?

(2) Is the position of a township clerk compatible with that of a full time employee of the county treasurer?

Chapter 501., Revised Code, deals with certain duties of the township clerk with regard to school and ministerial lands. Such clerk is allowed ten per cent of all moneys collected by him from ministerial lands and one and one-half per cent of moneys collected from school lands. (Section 501.12, Revised Code) Under Section 501.13, Revised Code, the clerk is allowed five dollars for the duties he is required to perform in connection with a meeting for distribution of the ministerial trust fund.

An examination of Chapter 507., Revised Code, which is devoted exclusively to the township clerk discloses that such officer is elected at the general election for a term of four years, and that before assuming his office he is required to put up a bond for the faithful performance of his duties. Such bond is payable to the board of township trustees, in the amount determined by such board. He is required to keep an accurate record of the proceedings of the board, of accounts and transactions of the township, and of marks and brands which owners of cattle and owners of other domestic animals may wish to have recorded. In case a vacancy occurs in any township elective office, he must notify the board of elections, in writing, of such vacancy. Further, he is required to record bonds of township constables, and administer oaths, and take and certify affidavits pertaining to the business of the township. A township clerk's responsibility for preparation of annual statements of receipts and expenditures of the township and of local school districts contained in Section 507.07, Revised Code, has been declared obsolete and repealed by implication.

(Opinion No. 120, Opinions of the Attorney General for 1957, Page 6.) The clerk is required to countersign every order for the payment of township money which must be signed personally by at least two township trustees.

Section 507.09, Revised Code, provides what fees the township clerk shall be entitled to for certain enumerated services performed for individual citizens and those in connection with the township business as such. It is to be noted that the maximum annual compensation from township sources is expressly limited to twenty-four hundred dollars, which may be deemed as having a bearing on the first question.

More important in the consideration of such questions are, however, two further circumstances. The township clerk is an elected official and therefore his office is on the same plane as are the offices of the members of the board of trustees, which among other things means that under normal circumstances he, like the trustees, is responsible only to the people. Further, holders of public offices with fixed substantial salaries are ordinarily required by statute to devote their entire time to the duties of such offices, whereas in the instant situation there is no such statutory provision.

In the light of the foregoing, I am impelled to conclude that a board of township trustees is without authority to regulate the duties of the township clerk and thereby require him to be present in the township office certain day-time hours each week.

The second question, inherent in the problem at hand, requires that it be determined whether or not the office of township clerk is compatible with the position of a full time employee of the county treasurer.

One of my predecessors considered a somewhat similar question in Opinion No. 1022, Opinions of the Attorney General for 1933, Volume II, page 1038, where the compatibility of the position of township clerk-treasurer with that of a county deputy treasurer was in issue, and it was decided that those two positions were incompatible. It is to be noted, however, that in the instant situation we are not dealing with one of the deputies of a county treasurer. The conclusion reached in Opinion No. 1022, *supra*, was predicated on the possibility of a conflict arising between the two positions because, as stated on page 1039:

“\* \* \*

“\* \* \* there might be occasions when the township clerk, as fiscal officer of his township, would be called before the county budget commission on which he was, as deputy treasurer, acting in place of the county treasurer. In such a situation, he would under his duties as township clerk be required to insist upon a proper share of the revenue for his subdivision, and under his duties as acting county treasurer on the budget commission, be required to adjust the funds among the subdivisions in an unbiased manner. Obviously, there would be conflicting duties which would, under the common law test of incompatibility, render the office of township clerk-treasurer and position of deputy county treasurer incompatible.”

The reasoning just quoted, while clearly sound in the context of facts there under consideration, is apparently not applicable to the instant fact situation, for the reason that a township clerk who is at the same time an employee of the county treasurer, could not act for such treasurer on the county budget commission.

I note that the person here involved is described as a full time employee of the county treasurer, which prompts you to pose the question as to whether or not under such circumstances it is possible for such person physically to carry out the duties of both positions. Obviously, this is a factual question which, in the light of the conclusion reached regarding the first question, must be resolved by the parties concerned in the light of all attendant circumstances.

Accordingly, it is my opinion and you are advised that :

1. Chapters 505. and 507., Revised Code, do not authorize a board of township trustees to regulate the time the township clerk should devote to the duties of his office, and therefore, such a board cannot require the clerk to be present in his office certain day-time hours each week.

2. A person may at the same time occupy the office of township clerk and be a full time employee of the county treasurer, provided it is physically possible for such person to perform the duties of both such positions.

Respectfully,

MARK MCELROY

Attorney General