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SYLLABUS:

The position of village solicitor appointed under Section 733.48, Revised Code, is not incompatible with the office of township clerk appointed under Section 507.02, Revised Code.

Columbus, Ohio, April 1, 1963

Hon. Paul J. Mikus
Prosecuting Attorney
Lorain County
Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Will you kindly advise our office as to the compatibility of one person holding the positions of Village Solicitor (O.R.C. Sec. 733.48) and Township Clerk (O.R.C. Sec. 507.02 such appointment being made after death during term of regularly elected Clerk) when such village and township are joined in the following activities:

- “(1) Union cemetery (O.R.C. Sec. 759.27);
- “(2) Joint town hall (O.R.C. Sec. 511.05); and
- “(3) Mutual fire protection contract (O.R.C. Sec. 505.44).

“Also, be advised that the said village is within the boundaries of the said township.”

Neither the Constitution nor the statutes prohibit the concurrent holding, by a single person, of the position of village solicitor and township clerk. Therefore, the answer to your inquiry depends upon the question of whether or not the two positions are incompatible.

“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 State of Ohio, ex rel. Attorney General v. Frank Gebert*, 12 C.C. (N.S.), 274, (1909).

Section 733.48 of the Revised Code authorizes the employment of legal counsel by the legislative authority of a village, for a period not to exceed two years.

It was stated, in substance, in the Annual Reports of the Attorney General for the year 1912, page 487, that a village solicitor is not an “official” within the meaning of Section 4762, General Code. It was further stated that a village solicitor is appointed by contract, fulfilling only contractual duties and serving for an indefinite term.

In Ohio, an incorporated village is classified as a municipal corporation under Section 1, Article 18 of the Constitution of Ohio and Title VII of the Revised Code. The general duties of a solicitor for a municipal corporation are summarized in Section 705.11 of the Revised Code. This Section provides in substance that the solicitor shall act as the legal advisor to and attorney for the municipal corporation. He shall likewise so act for all officers of the municipal corporation in matters relating to their official duties. The solicitor is to prepare all contracts and other substantial instruments in writing in which the municipal corporation is concerned and approve the form and correctness of each such instrument. A contract with the municipal corporation does not take effect until the approval of the solicitor is endorsed on the instrument.

The solicitor shall serve as prosecutor in any public or municipal court.

Section 507.02 of the Revised Code provides that for reasons set forth therein, the board of township trustees shall appoint a deputy clerk who shall have full power to discharge the duties of the elected office of township clerk. Section 507.03 of the Revised Code requires that before a clerk may begin performance of his duties, he must post bond for the faithful performance of his duties with the board of township trustees.

The general duties of a township clerk are summarized in 52 Ohio Jurisprudence 2d, page 308-309, Township, Sec. 56. Such clerk does not possess authority or power to make decisions generally. His duties are mandatory in nature rather than discretionary, and are of a secretarial character. In addition, he issues certain licenses, administers certain oaths, certifies certain records and notifies the elected officials of the township on the occurrence of specified events.

A careful comparison of the duties to be performed by a village solicitor and deputy township clerk discloses no common ground of activity. In addition, the clerk is bonded to secure the faithful performance of his duties. I can find no instance in which one position could be said to be subordinate to, or in any way a check upon the other. The fact that the village and township, with which we are concerned, are joined in certain activities, does not vary my opinion. The duties required to be performed in both positions are not changed in any substantial matter by such joint activities.

It does not appear that either the position of village solicitor or township clerk requires such full time physical devotion to duty as to make it physically impossible for the same individual to perform the necessary requirements of both positions.

Therefore, I find that the position of village solicitor appointed under Section 733.48, Revised Code, is not incompatible with the office of township clerk appointed under Section 507.02, Revised Code.

Respectfully,
WILLIAM B. SAXBE
Attorney General