

3930

COMPATIBLE OFFICE—ASSISTANT PROSECUTING ATTORNEY—MEMBER OF COUNTY BOARD OF ELECTIONS—IF PROSECUTING ATTORNEY OR ASSISTANT CURRENTLY CANDIDATE FOR ELECTIVE OFFICE, SECTION 3501.15 RC, THE SERVICE WOULD BE INCOMPATIBLE.

## SYLLABUS:

There is no incompatibility between the offices of assistant prosecuting attorney and member of a county board of elections unless such assistant or the prosecuting attorney whom he serves is currently a candidate for elective office within the meaning of Section 3501.15, Revised Code.

Columbus, Ohio, June 7, 1954

Hon. George R. Smith, Prosecuting Attorney  
Greene County, Xenia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Please furnish this office an opinion as to whether the positions of Assistant Prosecuting Attorney and member of the Board of Elections both in the same county are compatible or incompatible.”

A commonly accepted rule of incompatibility of office in Ohio is that two offices may not simultaneously be filled by the same person if one is a check upon or is subordinate to the other, or where there is a contrariety or antagonism between the two offices. See 32 Ohio Jurisprudence, 908, 909, Section 48.

A statutory restriction on the office of member of a board of elections will be found in Section 3501.15, Revised Code, as follows:

“No person shall serve as a member, clerk, deputy clerk, assistant clerk, or employee of the board of elections who is a candidate for any office to be filled at an election, except the office of delegate or alternate to a convention, member of the board of directors of a county agricultural society, presidential elector, or a member of a party committee. No person who is a candidate for an office or position to be voted for by the electors of a precinct shall serve as a precinct election officer in said precinct.”

This inhibition as to candidates is a statutory recognition of the potentially conflicting interests of candidates and election officials and we may readily conclude that such potential conflict would extend to an assistant prosecuting attorney, as well as to the superior to whom he owes his appointment, in situations where such superior is a candidate for elective office.

In cases where neither assistant nor his principal are such candidates, however, I perceive no element of incompatibility between the two offices here involved. In this connection it will be observed that the statute authorizing the appointment of assistants by the prosecuting attorney, Section 309.06, Revised Code, imposes no restrictions indicative of an incompatibility between this and any other office.

There is, of course, a quite evident incompatibility between the office of prosecuting attorney, who is ex officio a member of the county budget commission, and the office of member of a board of elections, for the incumbent of the former, as such commissioner, has the duty to adjust budget estimates submitted by such board in the steps preliminary to the appropriation of funds for the use of the board. In such matter it is to be noted, however, that the former is the superior office and the latter the subordinate. Thus if the office of member of the board of elections be conceded to be subordinate to the office of prosecuting attorney, it would then follow, a fortiori, that a subordinate office within such board would likewise be subordinate to the office of prosecuting attorney.

No such contrariety or antagonism results, however, when we consider the relative position of a deputy of the superior office and another office subordinate to such superior office, for here such two offices have a common superior. I do not conceive such situation involving a common superior to have the effect of necessarily creating an incompatibility.

Accordingly, in specific answer to your inquiry, it is my opinion that there is no incompatibility between the offices of assistant prosecuting attorney and member of a county board of elections unless such assistant or the prosecuting attorney whom he serves is currently a candidate for elective office within the meaning of Section 3501.15, Revised Code.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General