

**OPINION NO. 2001-009****Syllabus:**

Article IV, § 6(B) of the Ohio Constitution and R.C. 1907.16(B) prohibit a part-time county court judge from serving simultaneously as a part-time domestic relations magistrate of a court of common pleas, appointed pursuant to Ohio R. Civ. P. 53(A), in an adjacent county. (1996 Op. Att'y Gen. No. 96-024 and 1969 Op. Att'y Gen. No. 69-131, approved and followed.)

---

**To: Charles F. Kennedy, III, Van Wert County Prosecuting Attorney, Van Wert, Ohio**  
**By: Betty D. Montgomery, Attorney General, March 14, 2001**

You have requested an opinion concerning the compatibility of two public positions. You wish to know whether the positions of part-time county court judge and part-time domestic relations magistrate of a court of common pleas, appointed pursuant to Ohio R. Civ. P. 53(A), in an adjacent county are compatible.

Two public positions are incompatible, if, *inter alia*, the empowering statutes of either position limit a person from being employed in another position or holding another public office. 1999 Op. Att'y Gen. No. 99-036 at 2-231; 1989 Op. Att'y Gen. No. 89-069 at 2-321. Article IV, § 6(B) of the Ohio Constitution prohibits a judge from holding "any other office of profit or trust, under the authority of this state, or of the United States." This

prohibition has been interpreted to apply to all judges, including acting and sitting county court judges. 1996 Op. Att'y Gen. No. 96-024 at 2-86; 1991 Op. Att'y Gen. No. 91-010 at 2-51 and 2-52; 1969 Op. Att'y Gen. No. 69-131 at 2-286; *see also* 1973 Op. Att'y Gen. No. 73-081 (syllabus).

R.C. 1907.16(B) similarly provides that "[n]o county court judge shall hold any other office of trust or profit under the authority of this state or the United States." Article IV, § 6(B) of the Ohio Constitution and R.C. 1907.16(B) thus unequivocally prohibit an acting or sitting county court judge from holding another office of profit or trust under the authority of this state or of the United States. 1996 Op. Att'y Gen. No. 96-024 at 2-86; 1991 Op. Att'y Gen. No. 91-010 at 2-51 and 2-52; 1969 Op. Att'y Gen. No. 69-131 at 2-286; *see also* 1973 Op. Att'y Gen. No. 73-081 (syllabus).

1996 Op. Att'y Gen. No. 96-024 at 2-86 and 2-87 and 1969 Op. Att'y Gen. No. 69-131 at 2-286 and 2-287 concluded that the position of magistrate of a court of common pleas, appointed pursuant to Ohio R. Civ. P. 53(A), is an office of profit or trust under the authority of this state for purposes of Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B).<sup>1</sup> *See* 1990 Op. Att'y Gen. No. 90-089 at 2-381 through 2-383. As a result, these opinions advised, respectively, that an acting or sitting county court judge is prohibited by Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B) from holding the position of magistrate of a court of common pleas, appointed pursuant to Ohio R. Civ. P. 53(A). *See generally* 1990 Op. Att'y Gen. No. 90-089 (an individual may not serve simultaneously as an acting municipal court judge and referee of a municipal court).

We are in agreement with the conclusions set forth in 1996 Op. Att'y Gen. No. 96-024 and 1969 Op. Att'y Gen. No. 69-131. However, the factual circumstances presented in these two opinions were such that neither opinion found it necessary to consider whether the prohibition against holding another office of profit or trust set forth in Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B) applies to a part-time county court judge of one county holding a magistrate's position in another county, which is the issue presented by your question.

A review of Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B) discloses no language in either provision that limits its application to full-time county court judges. In fact, R.C. 1907.16(B) unequivocally states "[n]o county court judge shall hold any other office of trust or profit under the authority of this state or the United States." (Emphasis added.) The prohibition against holding another office of profit or trust set forth in Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B) thus applies to both full-time and part-time county court judges. *See also* 1973 Op. Att'y Gen. No. 73-081 (syllabus) ("[t]he prohibition expressed in Article IV, Section 6(B) of the Ohio Constitution, relating to the holding of an office of profit or trust, applies to all judges"); 1969 Op. Att'y Gen. No. 69-131 at 2-286 ("[t]he prohibition in [Ohio Const. art. IV, § 6(B)] covers all judges without limitation"). *See generally Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105-06, 304 N.E.2d 378, 381 (1973) ("[i]t is a cardinal rule that a court must first look to the language of the statute itself to determine the legislative intent. If

---

<sup>1</sup>Ohio R. Civ. P. 53(A) authorizes a court of record to appoint one or more magistrates. "[P]rior to the amendment of Ohio R. Civ. P. 53 in 1995, the position of 'magistrate' was titled 'referee.'" 1996 Op. Att'y Gen. No. 96-024 at 2-86. Before the Ohio Civil Rules of Procedure became effective on July 1, 1970, R.C. 2315.26-.37 governed the appointment, duties, and powers of referees. The provisions of R.C. 2315.26-.36 were incorporated into Ohio R. Civ. P. 53. *See generally* 1969-1970 Ohio Laws, Part III, 3017 (Am. H.B. 1201, July 1, 1971) (repealing R.C. 2315.26-.36 because these statutes were superseded by provisions within the Ohio Civil Rules of Procedure).

that inquiry reveals that the statute conveys a meaning which is clear, unequivocal and definite, at that point the interpretative effort is at an end, and the statute must be applied accordingly" (citation omitted)); 1973 Op. Att'y Gen. No. 73-082 (syllabus) (Ohio Const. art. IV, § 6(B) "prohibits an assistant county prosecuting attorney from also serving as a part-time municipal court judge").

In addition, no language in Ohio Const. art. IV, § 6(B) or R.C. 1907.16(B) indicates that a county court judge is prohibited from holding an office of profit or trust only within the county in which he serves. To the contrary, Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B) explicitly state that a county court judge is prohibited from holding "any other office" of profit or trust under the authority of this state. (Emphasis added.) "Where a statute uses the word 'any' to modify a noun without selection, distinction, or limitation, it is presumed that the legislative intent is that the noun modified by 'any' be treated as a whole class without division into smaller classes, and that 'any' may be equated to mean 'all' or 'every' in that context, especially where the statute uses mandatory language." 2000 Op. Att'y Gen. No. 2000-046 at 2-283. Thus, the fact that an office of profit or trust under the authority of this state is not within the county in which a county court judge serves is not germane when applying the provisions of Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B). Therefore, pursuant to Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B), a person may not hold simultaneously the positions of part-time county court judge and part-time domestic relations magistrate of a court of common pleas, appointed pursuant to Ohio R. Civ. P. 53(A), in an adjacent county.

You state in your letter that R.C. 1901.11(A)(2) and the analysis in 1971 Op. Att'y Gen. No. 71-005 (disapproved by 1973 Op. Att'y Gen. No. 73-082) and 1992 Op. Att'y Gen. No. 92-067 may permit us to conclude that the positions of part-time county court judge and part-time domestic relations magistrate of a court of common pleas in an adjacent county are compatible. R.C. 1901.11(A)(2) provides that "[p]art-time judges shall be disqualified from the practice of law only as to matters pending or originating in the courts in which they serve during their terms of office." Although the converse of this statute permits part-time judges to practice law in matters not pending or originating in the courts in which they serve, *see Thomas v. Maxwell*, 175 Ohio St. 233, 193 N.E.2d 150 (1963), this statute cannot reasonably be interpreted as permitting a county court judge to serve as a magistrate of a court of common pleas in an adjacent county.

As a general matter, R.C. 1901.11(A)(2) applies to part-time municipal court judges.<sup>2</sup> *See* R.C. 1901.08; R.C. 1901.11(A)(1); *Thomas v. Maxwell*, 175 Ohio St. at 235-36, 193 N.E.2d at 152. Moreover, "[i]t is a well-established principle that exceptions to the application or operation of the terms of a particular statute shall be recognized only when such exceptions are set forth clearly and unambiguously either in the statute itself or in another statute, and in those instances in which the General Assembly has not enacted an exception to the terms of a particular statute, there is a presumption that it has intended that there shall be no exceptions thereto." 1988 Op. Att'y Gen. No. 88-007 at 2-20; *accord Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969, 972 (1910). The purpose of statutory language permitting a judge to practice law in matters not pending or originating in the courts in which he serves is not to create an exception to the prohibition against holding another office of profit or trust set forth in Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B). Rather, this language was intended to clarify the situations in which it is permissible for a judge to

---

<sup>2</sup>Similar language permitting county court judges to practice law in matters not pending or originating in the courts in which they serve appears in R.C. 1907.16(B).

practice law. Accordingly, the language of R.C. 1901.11(A)(2) does not provide an exception to the terms of Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B).

Regarding 1971 Op. Att'y Gen. No. 71-005 and 1992 Op. Att'y Gen. No. 92-067, you state that since these opinions concluded that a county court judge may hold the position of city solicitor and assistant city solicitor, "it ought to be compatible [for a county court judge] to be a [m]agistrate in an adjoining county." For the following reasons, we must respectfully disagree.

1971 Op. Att'y Gen. No. 71-005, which was disapproved by 1973 Op. Att'y Gen. No. 73-082, concluded that the positions of county court judge and assistant city solicitor in an adjoining county are compatible. In coming to this conclusion, however, the opinion failed to mention the prohibition in Ohio Const. art. IV, § 6(B), and thus did not consider whether the position of assistant city solicitor was an office of profit or trust for purposes of that prohibition. 1992 Op. Att'y Gen. No. 92-067, on the other hand, determined that the position of city solicitor was not an office of profit or trust for purposes of the constitutional prohibition, and thus advised that such prohibition was not an impediment to a person serving both as county court judge and city solicitor.

Neither opinion, however, addressed the question whether the position of magistrate of a court of common pleas is an office of profit or trust for purposes of Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B). Those opinions that have addressed this question have answered it in the affirmative. 1996 Op. Att'y Gen. No. 96-024; 1969 Op. Att'y Gen. No. 69-131. Thus, Ohio Const. art. IV, § 6(B) and R.C. 1907.16(B) prohibit a part-time county court judge from serving simultaneously as a part-time domestic relations magistrate of a court of common pleas, appointed pursuant to Ohio R. Civ. P. 53(A), in an adjacent county.

Based on the foregoing, it is my opinion, and you are hereby advised that article IV, § 6(B) of the Ohio Constitution and R.C. 1907.16(B) prohibit a part-time county court judge from serving simultaneously as a part-time domestic relations magistrate of a court of common pleas, appointed pursuant to Ohio R. Civ. P. 53(A), in an adjacent county. (1996 Op. Att'y Gen. No. 96-024 and 1969 Op. Att'y Gen. No. 69-131, approved and followed.)