

OPINION NO. 66-093

Syllabus:

The position of "Inspector" under Section 319.59, Revised Code, (formerly "Deputy Sealer") is not incompatible with that of township clerk provided it is physically possible for one person to perform the duties of both offices.

To: Tom Richards, Carroll County Pros. Atty., Carrollton, Ohio
By: William B. Saxbe, Attorney General, May 16, 1966

In your letter of request for my opinion, you ask the following question:

"Is the position of Deputy Sealer of Weights and Measures compatible with the office of Township Clerk?"

At the outset, it is assumed that you are in part referring to the position of "Inspector" as provided for in Section 319.59, Revised Code, which reads as follows:

"Each county sealer of weights and measures shall appoint, by writing under his hand and seal, one or more inspectors, who shall compare weights and measures wherever they are used or maintained for use within his county, or which are brought to the office of the county sealer for that purpose, with the copies of the standards in the possession of the county sealer. Such inspectors shall receive a salary fixed by the county sealer, to be paid by the county, which shall be instead of all fees or charges otherwise allowed by law. Such inspectors shall also be employed by the county sealer to assist in the prosecution of all violations of law relating to weights and measures."

Prior to November 3, 1965, "Inspectors" were known as "Deputy Sealers" and it would seem that only the name and not the substance of the position has changed. I discount the possibility that you are concerned with the position of "deputy state sealer" as provided for in Section 901.10, Revised

Code, or with any municipal deputies that might exist under Section 733.63, Revised Code.

I find no statutory ground or specific legal precedent which would make these positions incompatible. This being true, the inquiry must turn to the common law.

The common law test of incompatibility is stated in the case State ex rel. Attorney General v. Gebert, 12 C.C. (N.S.) 274, 275, as follows:

"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 duties of a township clerk are set forth in Chapter 507, Revised Code.

In Opinion No. 212, Opinions of the Attorney General for 1912, page 481, the then Attorney General concluded as follows at page 482:

"The deputy county sealer of weights and measures is not subordinate to, nor in any way a check upon the clerk of the township, or upon the members of the board of education. The duties of the first position are independent of the duties of the latter positions. * * *"

Whether there is physical impossibility of performance of the duties of both positions is a question of fact to be determined in each case.

It is, therefore, my opinion and you are advised that the position of "Inspector" under Section 319.59, Revised Code, (formerly "Deputy Sealer") is not incompatible with that of township clerk provided it is physically possible for one person to perform the duties of both offices.