

Note from the Attorney General's Office:

1937 Op. Att'y Gen. No. 37-714 was overruled by
2019 Op. Att'y Gen. No. 2019-005.

714.

TOWNSHIP CLERK MAY BE EMPLOYED AS CARETAKER OR
SEXTON OF TOWNSHIP CEMETERY, WHEN—NO IN-
COMPATIBILITY.

SYLLABUS:

A township clerk may be employed as caretaker or sexton of a township cemetery upon a contract from month to month or for one year, such compensation to be paid to the caretaker in addition to the amount fixed for his services as township clerk.

COLUMBUS, OHIO, June 10, 1937.

HON. FRANK A. ROBERTS, *Prosecuting Attorney, Batavia, Ohio.*

You have requested my opinion by your recent letter, which reads as follows:

“May a Board of Township Trustees employ their Township Clerk as caretaker or sexton of a Township Cemetery upon a contract from month to month or for one year, such compensation to be paid in addition to the amount fixed for his services as Township Clerk.

Attorney General’s opinion No. 798, under date of November 19, 1919, would indicate that such a contract would be legal, although no answer was given to the specific question herein propounded.”

The answer to your inquiry lies in ascertaining whether or not the office of the township clerk is incompatible with the duties of a caretaker of a township cemetery.

You refer to Opinion No. 798, appearing in Opinions of the Attorney General for 1919, Volume II, Page 1474. The first branch of the syllabus of this opinion reads as follows:

“1. Sections 12910 and 12912 G. C. do not prohibit the employment of a township clerk by the trustees of his township for the rendition of personal services on township road work, ditch work and miscellaneous work.

Whether such employment is prohibited if it involves the furnishing by the clerk of material—*Quaere.*”

As far as such employment of the township clerk as caretaker of the township cemetery is concerned, I believe that it is within the authority of the township trustees to so hire. I believe further that the duties of the caretaker of a township cemetery are not such official duties as are contemplated by the general law of Ohio that more than one office can be held by one individual if the offices are compatible, and no more than one office can be held by one individual if the offices are incompatible.

It has been held in the Opinions of the Attorney General for 1918, Volume 1, Page 683, that a township clerk could also be employed as a janitor of public buildings. If this be true, certainly a township clerk could be employed as caretaker for a township cemetery.

The second branch of the syllabus of the opinion of the former Attorney General above referred to reads as follows:

“The limitation of Section 3308, General Code, upon maximum annual compensation of the township clerk does not apply to services outside the scope of his official duties.”

It is therefore my opinion, in specific answer to your inquiry, that the township clerk may be employed as caretaker or sexton of a township cemetery upon a contract from month to month or for one year, such compensation to be paid to the caretaker in addition to the amount fixed for his services as township clerk.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

715.

SECTIONS 6064-1, 6064-15, 6064-41, 6064-42, GENERAL CODE ARE LAWS PROVIDING TAX LEVIES—ARTICLE II, SECTION 1d, OHIO CONSTITUTION—PERMITS REMAIN IN FORCE, WHEN—LIQUOR PERMITS, FEES, RIGHTS, ETC.

SYLLABUS:

1. Sections 6064-1, 6064-15, 6064-41 and 6064-42, General Code, as contained in Amended House Bill 501 of the 92nd General Assembly are “laws providing for tax levies” within the meaning of the term as used in Article II, Section 1d of the Constitution, and became effective May 20, 1937, when such act was signed by the Governor.