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1. COMPATIBLE — INCOMPATIBLE — COUNTY AUDITOR — OFFICE INCOMPATIBLE WITH ANY AND ALL OFFICES OR EMPLOYMENTS WHICH RECEIVE OR PAY OUT FUNDS OF COUNTY—PAYMENT OF CLAIMS—COUNTY AUDITOR CAN NOT FILL SECOND POSITION WHEN DUTIES OF SECOND POSITION REQUIRE INCUMBENT TO ACCOUNT FOR, RECEIVE OR EXPEND COUNTY MONEYS OR FUNDS OR CERTIFY CLAIMS TO COUNTY AUDITOR FOR PAYMENT.
2. OFFICES, COUNTY AUDITOR AND CLERK OF BOARD OF ELECTIONS INCOMPATIBLE—MAY NOT BE HELD BY ONE AND SAME PERSON AT SAME TIME.

SYLLABUS:

1. The office of county auditor is incompatible with any and all offices or employments which receive or pay out funds of the county, or where such offices or employments make a certificate to the county auditor for the payment of claims, and the county auditor cannot fill a second position when the duties of said second position or office require the incumbent to account for, receive or expend moneys or funds of the county, or to certify claims to the county auditor for payment.

2. The offices of county auditor and clerk of the board of elections are incompatible and may not be held by one and the same person at the same time. (1920 O.A.G. No. 1778, Vol. II, p. 1280 approved and followed, with changes noted herein).

Columbus, Ohio, September 13, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"Section 4785-10, General Code provides for the organization of the members of the board of elections and appointment of a clerk.

"Section 4785-14, General Code prescribes the duties of the clerk of the board of elections.

"Sections 4785-18 and 4785-20, General Code provide the manner in which salaries and other expenses of the election board are to be certified and paid.

"Section 4785-16, General Code provides:

'No person shall serve as a member, clerk, deputy clerk, assistant clerk, or employe of the board of elections who is a candidate for an office to be filled at an election, except the office of delegate or alternate to a convention or a member of a party committee.'

"May we respectfully request your opinion on the following questions:

"1. May the positions of county auditor and clerk of the election board be held by the same person when such person is not prohibited from so serving by the provisions of Section 4785-16, General Code?

"2. May the positions of deputy county treasurer and clerk of the election board be held by the same person?"

Your first request was the subject of an opinion rendered by the Attorney General in 1920. See opinion of the Attorney General for 1920, No. 1778, Vol. II, page 1280. The sections of the code cited therein are not in accord with the present sections yet the wording is essentially the same and the reasoning is equally applicable. The changes in the section numbers cited in the 1920 opinion are as follows:

Section 4970-1 General Code was repealed in 113 O. L. 307 (412). The analogous section of the new election laws is Section 4785-73 General Code.

Section 4822 General Code, was repealed in 113 O. L. 307 (412). The analogous sections of the new election law are Sections 4785-19 and 4785-18 General Code.

Sections 5052, 5053 and 5054, General Code, were repealed and the analogous section of the new election law is Section 4785-20 General Code.

Section 4974 General Code, was repealed in 113 O. L. 307 (412). The analogous section of the new election law is Section 4785-78 General Code.

The above are the only important changes, and they do not in my opinion, alter the conclusion reached.

The reasons the then Attorney General ruled that the offices of county auditor and clerk of the election board are incompatible are as follows:

(1) 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.

(2) The office of county auditor is incompatible with any and all offices or employments which receive or pay funds of the city, or where such offices or employments make a certificate to the county auditor for the payment of claims and the county auditor cannot fill a second position where the duties of such second position or office require the incumbent to account for, receive or expend moneys or funds of the city or to certify claims to the auditor for payment, except in those cases specifically provided by statute.

(3) The clerk of the board of elections does receive funds intended for the county. See Section 4785-73 (formerly Section 4970-1.)

(4) The fees received by the clerk of the board of elections are certified by the county auditor. See Section 2567 and Section 2568, General Code. This condition places a check by the county auditor on the clerk.

(5) An officer handling money, e.g. the clerk, might be required to give a bond and such bond might be deposited with the county auditor. An officer cannot have custody of his own bond.

(6) An office is incompatible with another office where one office makes a certificate to the other for the payment of claims, or where the duties of the second office require the incumbent to account for, receive and expend moneys or funds of the city or to certify claims to the auditor for payment. The auditor must account for or expend moneys where the

claims have been certified to the county by the clerk. See Section 4785-19 and 4785-18 General Code.

(7) The compensation of the clerk is in the form of a voucher, directed to the county auditor who shall draw his warrant on the county treasurer for the amount thereof. If the same person were clerk and auditor he would in a sense be certifying his own compensation to himself.

(8) The clerk might have an expense account which he was desirous of having approved by the county commissioners and if the clerk as auditor was also the secretary of the board of county commissioners the order made as to such expense account would have to be entered in the minutes of the commissioners by the auditor, or, in other words, himself. See Section 2566, General Code.

(9) Section 2631, General Code, limits the amount of fees which a county auditor can receive either as clerk of any board or for any other services rendered by him.

(10) The position of clerk is not always a ministerial office for there frequently comes a time when he is clothed with power co-equal with others on the board in his county, e.g., where protests have been filed against the candidacy of a person in the district. (Section 4785-78, General Code.)

For these reasons it is my opinion that the offices of clerk of the election board and county auditor are incompatible and I approve and follow the 1920 opinion, with changes noted above. I reach this conclusion, being fully aware of an informal opinion rendered by this office on April 26, 1948, being Informal Opinion No. 359, answering a request of the Prosecuting Attorney of Warren County. This opinion states that the two offices involved are compatible. I do not agree with the reasoning or the conclusion reached in that opinion.

The answer to your second request is the subject of an opinion rendered to the Prosecuting Attorney of Logan County under date of August 29, 1949, being Opinion of the Attorney General No. 924. I am attaching a copy of that opinion for your convenience.

Respectfully,

HERBERT S. DUFFY,
Attorney General.