

OPINION NO. 71-065

Syllabus:

Assuming there is no village ordinance to the contrary, a member of a village police department may also serve as clerk of the township in which the village is located, unless it is physically impossible for the same person to perform the duties of both offices.

To: James R. Scott, Guernsey County Pros. Atty., Cambridge, Ohio
By: William J. Brown, Attorney General, October 6, 1971

You have requested my opinion as to whether a member of a village police department may at the same time serve as clerk of the township within which the village is located. I will assume that you are referring to an incorporated village.

There appears to be no statutory prohibition against the holding of these two offices by one individual. The office of the township clerk is elective. Section 507.01, Revised Code, provides as follows:

"A township clerk shall be elected at the general election in nineteen fifty-one, and quadrennially thereafter in each township, and he shall hold his office for a term of four years commencing on the first day of January next after his election."

It is, therefore, a political office (Opinion No. 223, Opinions of the Attorney General for 1959), and those who hold positions in the classified civil service are prohibited from running for such an office. Section 143.41, Revised Code, provides, in pertinent part, as follows:

"No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, shall directly or indirectly * * * take part in politics other than to vote as he pleases and to express freely his political opinions."

Village offices, however, are not included in the classified service and Section 143.41, *supra*, does not apply to them. In Opinion No. 3521, Opinions of the Attorney General for 1962, my predecessor, said:

"Since Section 143.41, Revised Code, does not apply to the chief or members of a village police department, and Sections 737.15 and 737.16, Revised Code, do not prohibit the chief, or such members from taking part in politics, then, in the absence of a valid ordinance or resolution by the legislative authority of the village prohibiting the chief or such members from taking part in politics, the chief or such member may hold an elective or appointive office at the same time he is serving in the police department assuming he is physically able to do so."

Since there is no statutory prohibition against the simultaneous holding of these two offices, and assuming that the village has no such prohibitory ordinance, we must look to the rule of the common law as to compatibility of employment. In Ohio, the general rule on this subject has been stated in State ex rel. Attorney General v. Gebert, 12 Ohio C.C.R. (n.s.) 274, 275 (1909):

"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."

For an extended summary of the law on this matter, see State ex rel. Hover v. Wolven, 175 Ohio St. 114 (1963).

The elective position of township clerk and the position of village policeman are neither subordinate to, nor in any way a check upon the other; and such positions may be held by the same person so long as it is not physically impossible for one person to discharge the duties of both. In Opinion No. 161, Opinions of the Attorney General for 1963, my predecessor held that "the positions of deputy sheriff [a law enforcement officer] and township clerk are compatible, unless it is physically impossible for the same person to perform the duties of the two positions."

In specific answer to your question, it is my opinion, and you are so advised, that assuming there is no village ordinance to the contrary, a member of a village police department may also serve as clerk of the township in which the village is located, unless it is physically impossible for the same person to perform the duties of both offices.