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COMPATIBLE OFFICE—COURT OF APPEALS—MAY APPOINT SAME INDIVIDUAL COURT CONSTABLE IN TWO OR MORE OF COUNTIES IN JUDICIAL DISTRICT—COMPENSATION MAY BE PAID INDIVIDUAL IN EACH COUNTY—SECTIONS 2701.07, 2701.08 RC.

SYLLABUS:

Under the provisions of Section 2701.07, Revised Code, a court of appeals may appoint the same individual as court constable in two or more of the counties in the judicial district concerned, and such individual may be compensated for his services in each of such counties as provided in Section 2701.08, Revised Code.

Columbus, Ohio, December 6, 1955

Hon. Amos L. Conn, Presiding Judge, Court of Appeals of Ohio
Sixth Appellate District, Toledo, Ohio

Dear Sir:

Your request for my opinion reads in pertinent part as follows:

“Mr B is * * * employed as court constable in the Court of Appeals of Lucas County, for which he receives \$2400.00 per annum from such county.

“In the interest of spreading the expense, we contemplate appointing him as court constable in each of the other seven counties in the District, with compensation at the rate of \$100.00 per annum.

“I am therefore writing to receive from your office an opinion as to whether the same individual can be appointed court constable in each county of an appellate district, with varying rates of compensation as between the several counties—roughly computed on the amount of services rendered by him in such county.”

The appointment of court constables is authorized by the provisions of Section 2701.07, Revised Code. This section reads:

“When, in the opinion of the court, the business thereof so requires, each court of common pleas, court of appeals, and, in counties having at the last or any future federal census more than

seventy thousand inhabitants, the probate court, may appoint one or more constables to preserve order, attend the assignment of cases in counties where more than two judges of the court of common pleas regularly hold court at the same time, and discharge such other duties as the court requires. When so directed by the court, each constable has the same powers as sheriffs to call and impanel jurors, except in capital cases."

The compensation of these employees is provided for in Section 2701.28, Revised Code, which reads in part:

"Each constable appointed under Section 2701.07 of the Revised Code shall receive the compensation fixed by the judge or judges of the court making the appointment, to be paid monthly from the county treasury on the order of the court, * * *."

The provision in the latter section to payment from "the" county treasury indicates that where an appointment of this sort is involved such appointment is made by the court as a court of the county concerned rather than as the court of the judicial district in which the county is located; and it indicates also that the individual so appointed is an employee of the county concerned. It follows, therefore, that a court of appeals is authorized to appoint one or more constables in each of the counties within its district.

The question presented in the instant case is whether the same individual may be so appointed in more than one county of the district.

In my opinion this question must be answered in the affirmative. There is no suggestion in the statute authorizing the appointment of these employees either that the individual concerned need be a resident of the county in which appointed or that the two or more employments are incompatible. Indeed, the primary duty of a court constable is to attend the sessions of the court, and when the court is in session in a county other than that in which the constable is appointed there would be no duty of this sort to be discharged in such county of appointment. As to "such other duties as the court requires" there could obviously be no conflict or contrariety of interest since the court itself, by making the appointment, has indicated that no "other duties" would be required of the individual concerned in counties other than that in which the court is sitting during such times as the constable is attending sessions of the court in such county.

Accordingly, in specific answer to your inquiry, it is my opinion that under the provisions of Section 2701.07, Revised Code, a court of appeals

may appoint the same individual as court constable in two or more of the counties in the judicial district concerned, and such individual may be compensated for his services in each of such counties as provided in Section 2701.08, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General