

OPINION NO. 84-028**Syllabus:**

A municipal court clerk may not appoint deputy sheriffs of the county in which the municipal court is located as deputy clerks of the court. (1961 Op. Att'y Gen. No. 2066, p. 132, approved and followed.)

To: Roger L. Kline, Pickaway County Prosecuting Attorney, Circleville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 11, 1984

I have before me your request for an opinion in which you ask if the Circleville Municipal Court Clerk may appoint the Pickaway County deputy sheriffs to serve as deputy clerks of the court. If so appointed, the deputy sheriffs would be used to administer oaths on criminal complaints.

The seven criteria for determining whether two positions are incompatible are set forth in 1979 Op. Att'y Gen. No. 79-III, which provides that two positions are considered incompatible if, inter alia, one is subordinate to or a check upon the other, or if an individual serving in both positions would be subject to a conflict of interest. See State ex rel. Attorney General v. Gebert, 12 Ohio C C. (n.s.) 274 (Cir. Ct. Franklin County 1909).

The sheriff and his deputies are the chief law enforcement officers of the county, R.C. 311.07, and are responsible not only for law enforcement but may also be called upon to serve criminal warrants in any area of the county in which a municipal court may have jurisdiction. R.C. 1901.23; 1979 Op. Att'y Gen. No. 79-008 (overruling in part 1959 Op. Att'y Gen. No. 103, p. 48). As to the clerk of a municipal court R.C. 1901.31 provides in pertinent part:

(E) The clerk of a municipal court may administer oaths, take affidavits, and issue executions upon any judgment rendered in the municipal court, including a judgment for unpaid costs; may issue and sign all writs, process, subpoenas, and papers issuing out of the court, and attach the seal of the court to the writs, process, subpoenas, and papers; and may approve all bonds, sureties, recognizances, and undertakings fixed by any judge of the court or by law. He shall file and safely keep all journals, records, books, and papers belonging or appertaining to the court, record its proceedings, perform all other duties that the judges of the court may prescribe, and keep a book showing all receipts and disbursements, which book shall be open for public inspection at all times.

. . . .

(H) Deputy clerks may be appointed by the clerk and shall receive the compensation, payable in semimonthly installments out of the city treasury, that the clerk may prescribe, except that the compensation of any deputy clerk of the Hamilton county municipal court shall be paid out of the treasury of Hamilton county. Each deputy clerk shall take an oath of office before entering upon duties of his office, and when so qualified, may perform the duties appertaining to the office of the clerk. The clerk may require any of the deputy clerks to give bond of not less than three thousand dollars, conditioned for the faithful performance of his duties. (Emphasis added.)

The aforementioned duties and responsibilities of the clerk of a municipal court and the sheriff or their deputies evidence a potential for conflicts similar to conflicts one of my predecessors found to exist between the offices of the clerk of a county court and the sheriff or his deputies in 1961 Op. Att'y Gen. No. 2066, p. 132. It was stated therein:

A consideration of the duties and responsibilities of the clerk of court make it evident that a sheriff in so far as service of process, execution of affidavits and other miscellaneous matters, is subordinate to and dependent upon the clerk of the county court. It is further apparent that since the sheriff is the chief law enforcement agent of the county he would necessarily be called upon to investigate any irregularities arising in the handling of funds collected by the clerk and in the general operation of the office.

Id. at 134. My predecessor concluded:

The county sheriff must act upon the demand of the clerk. The county clerk of courts must collect and account for funds collected as a result of the actions of the sheriff. These positions are clearly designed to separate the function of law enforcement from the ministerial duties of accounting not only for documents served by the sheriff but bail posted to secure appearance and fines levied by the court. The separation of such duties are [sic] well founded and thus the two cannot be joined for the sake of expediency.

Id. at 136. I concur in my predecessor's reasoning and find it is equally compelling in this instant matter. Although the clerk of a municipal court could call upon the sheriff or his deputies only in the limited case of serving criminal warrants in any area of the county, R.C. 1901.23, still to such extent the sheriff or his deputies are subordinate to and dependent upon the clerk of a municipal court. Notwithstanding the fact that the clerk is a clerk of a municipal court, the sheriff or his deputies could still be called upon to investigate any irregularities arising in the handling of funds collected by the clerk or deputy clerks, R.C. 311.07.

Accordingly, it is my opinion, and you are advised, that a municipal court clerk may not appoint deputy sheriffs of the county in which the municipal court is located as deputy clerks of the court. (1961 Op. Att'y Gen. No. 2066, p. 132 approved and followed.)