

OPINION NO. 96-017**Syllabus:**

The position of deputy sheriff is incompatible with the position of part-time village police officer, where the village is within the same county served by the deputy sheriff. (1989 Op. Att'y Gen. No. 89-044 (syllabus, paragraph one) and 1987 Op. Att'y Gen. No. 87-002, approved and followed.)

To: R. Kelly Ormsby, III, Paulding County Prosecuting Attorney, Paulding, Ohio
By: Betty D. Montgomery, Attorney General, March 12, 1996

I have before me your request for my opinion concerning the compatibility of the positions of deputy sheriff and part-time village police officer. You have stated that several villages within the county would like to employ off-duty deputy sheriffs as part-time police officers. However, prior opinions of the Attorney General have concluded that the positions of deputy sheriff and village police officer are incompatible. Accordingly, you ask that I review these opinions, and reconsider whether the position of deputy sheriff is compatible with the position of part-time village police officer, where the village is within the same county served by the deputy sheriff.

1987 Op. Att'y Gen. No. 87-002 and 1989 Op. Att'y Gen. No. 89-044 determined that to the extent that a deputy sheriff and village police officer are expected to follow different law

enforcement standards, policies, and techniques, an individual serving in both positions would be subject to a conflict of interest. As stated in 1987 Op. Att'y Gen. No. 87-002 at 2-9:

[A] deputy sheriff and village police officer who serve within the same county would both have jurisdiction over territory within the village. Thus, a person who held the positions of deputy sheriff and village peace officer would be subject to divided loyalties. A deputy sheriff is expected to comply with the law enforcement standards, policies, and techniques established by the county sheriff. *See generally In Re Termination of Employment; State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 76 N.E.2d 294 (Allen County 1946). As chief of police, the village marshal is involved in the establishment of standards, policies, and techniques for the village police department, *see generally* R.C. 737.18, R.C. 737.19, and all members of the village police department must follow such requirements established by the chief, the mayor, and the legislative authority, *id.* Thus, to the extent that a deputy sheriff and village peace officer are expected to follow different law enforcement standards, policies, and techniques, I believe that one person serving in both positions would be subject to divided loyalties or a conflict of interest.

Accord 1989 Op. Att'y Gen. No. 89-044 at 2-188.

In addition, these opinions noted that there are several statutes whereby the lines of control and authority between the county sheriff's department and a village police department might be altered, providing additional potential for conflict or incompatibility. Under R.C. 311.07(B), a county sheriff may call upon the mayor or other chief executive officer of any village within his county to furnish law enforcement personnel and equipment to preserve the public peace and to protect persons and property in the event of riot, insurrection, or invasion. If the county sheriff were to call upon the mayor or other chief executive officer of the village to furnish law enforcement personnel, a situation could arise where a deputy sheriff would be in a position of supervising village police officers. An individual who holds the positions of deputy sheriff and part-time village police officer thus could be required, as a deputy sheriff, to supervise and review his work as a village police officer. *See* 1989 Op. Att'y Gen. No. 89-044 at 2-188; 1987 Op. Att'y Gen. No. 87-002 at 2-9.

Similarly, under R.C. 311.29(B), R.C. 737.04, and R.C. 737.041, which provide, in general, for the provision of police protection services between a county and village, if police protection services are provided to a village by the county sheriff, or received by the sheriff from a village, it is possible that the sheriff or a deputy sheriff may be placed in a position of supervising village police officers, or in a position that is subordinate to a village police officer. Thus, an individual, as a deputy sheriff, may be required to supervise his work as a village police officer, or the individual, as a village police officer, may be required to review his work as a deputy sheriff. *See* 1989 Op. Att'y Gen. No. 89-044 at 2-188; 1987 Op. Att'y Gen. No. 87-002 at 2-9 and 2-10. *See generally* 1979 Op. Att'y Gen. No. 79-099 at 2-308 ("[t]here can be a no stronger case of subordination, and, therefore, incompatibility, than a direct employer-employee relationship").

A review of 1987 Op. Att'y Gen. No. 87-002 and 1989 Op. Att'y Gen. No. 89-044 discloses that the opinions are well-reasoned and persuasive. The reasoning underlying these opinions is that a law enforcement officer must not be subject to divided loyalties or a conflict

of interest. As a practical matter, the fact that the positions of deputy sheriff and village police officer "have different appointing authorities, statutorily imposed duties and jurisdictional limitations militates against a finding of no conflicting duties and interests." 1989 Op. Att'y Gen. No. 89-044 at 2-188 n.3. Moreover, a law enforcement officer owes a duty of loyalty to the law enforcement agency that employs him. If an individual were permitted to serve simultaneously as a deputy sheriff and a village police officer, the individual would be subject to divided loyalties and conflicting interests in mutual aid situations.

Thus, while I am mindful that deputy sheriffs may provide a readily available source of trained law enforcement officers for villages, I am constrained to agree with my predecessor's conclusion that deputy sheriffs and village police officers must be free of influences that prevent them from discharging their duties in an objective manner. The integrity of the law enforcement profession demands that the actions, conduct, and motives of law enforcement officers be beyond reproach. As such, I believe that prudence dictates that a law enforcement officer may not simultaneously hold an additional position which would subject him to divided loyalties and conflicting duties or to the temptation to act other than in the best interests of the public.

Because an individual who holds simultaneously the positions of deputy sheriff and part-time village police officer within the same county is subject to a conflict of interest and divided loyalties, I must agree with my predecessor and conclude that an individual may not hold the positions of deputy sheriff and part-time village police officer simultaneously. Accordingly, I hereby approve and follow the conclusion stated in the syllabus of 1987 Op. Att'y Gen. No. 87-002 and the first paragraph of the syllabus of 1989 Op. Att'y Gen. No. 89-044.

Based on the foregoing, it is my opinion, and you are advised that the position of deputy sheriff is incompatible with the position of part-time village police officer, where the village is within the same county served by the deputy sheriff. (1989 Op. Att'y Gen. No. 89-044 (syllabus, paragraph one) and 1987 Op. Att'y Gen. No. 87-002, approved and followed.)