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COMPATIBLE OFFICE — TOWNSHIP TRUSTEE — VILLAGE
MARSHAL — MAY BE HELD SIMULTANEOUSLY BY SAME
PERSON.

SYLLABUS:

The offices of township trustee and village marshal are compatible and can be lawfully held simultaneously by one and the same person, unless it is physically impossible for one person to discharge the duties of both offices.

Columbus, Ohio, December 31, 1941.

Hon. Meryl B. Gray, Prosecuting Attorney,
Lebanon, Ohio.

Dear Sir:

I have your request for my opinion, your letter reading in part as follows:

“Will you please advise me as to whether or not the holding of an elective office of Township Trustee and the appointive job of Marshal or police officer in a village, under the new law, are compatible.”

There are no statutory inhibitions upon the same person holding the office of township trustee and village marshal simultaneously. It remains to be determined, therefore, whether or not the two offices are compatible at common law. The common law rule of incompatibility as stated by the Circuit Court in the case of *State ex rel. vs. Gebert*, 12 C. C., N S. 274, is as follows:

“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.”

It therefore becomes necessary to determine whether or not either one of the offices in question is subordinate to, or a check upon the other, that is whether or not the same person can, if occupying both, exercise independent judgment in connection with the discharge of the duties thereof, and also whether it is physically possible for one person to discharge the duties of both offices.

Upon examination of the statutes setting forth the duties of office of township trustee and village marshal, I do not find that two offices are in any wise a check upon each other, or that one is in any respect subordinate to the other. Their duties lie in two different fields, and cannot at any time become adversary.

Therefore, in specific answer to your inquiry, it is my opinion that the offices of township trustee and village marshal are compatible and can be lawfully held simultaneously by one and the same person, provided,

of course, that it is physically possible for such person to discharge the duties of both offices.

Respectfully,

THOMAS J. HERBERT,

Attorney General.