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COMPATIBLE OFFICE—POSITIONS, CITY SOLICITOR OF KENT, OHIO, AND INSTRUCTOR AT KENT STATE UNIVERSITY—COMPATIBLE—MAY BE HELD BY SAME PERSON AT SAME TIME.

SYLLABUS:

The positions of City Solicitor of Kent, Ohio and Instructor at Kent State University are compatible and may be held by the same person at the same time.

Columbus, Ohio, March 7, 1950

Hon. Seabury H. Ford, Prosecuting Attorney  
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion is as follows:

“In the election of November 8, 1949, the newly elected Solicitor of the city of Kent was holding the job of Instructor in Business Law at Kent State University, for which position he receives a salary from the State of Ohio.

Will you please advise as to whether these two positions are compatible or not.”

I know of no general rule of law in force in this state which prevents a person from holding two public positions and drawing pay for services rendered in both positions, providing the positions are not incompatible because of conflict of duties and it is physically possible for him to perform his full duty in compliance with law in each position. That is to say, the fact that he is paid compensation for two positions is not in and of itself, and for that reason alone, illegal.

In other words, unless the law either specifically forbids the simultaneous holding of two or more positions by the same person, or unless the several positions involve a conflict of duties or interests, or their duties are such that the full performance of all of them would be physically impossible, I am of the opinion that their being held by one and the same person is not contrary to law.

A number of statutes have been enacted from time to time, specifically inhibiting the simultaneous holding of certain public positions by the same person.

There is nothing inherently incompatible in being a city solicitor and teaching at Kent State University, so far as conflict of duties or interests is concerned. It is therefore necessary to examine the statutes with reference to these positions to determine whether or not such dual employment is expressly prohibited or whether it is physically possible to fill both positions.

Section 4303 et seq., General Code, provide for a solicitor in cities. There is nothing contained therein which could be considered a specific prohibition against a solicitor being an instructor at a state university. The only specific requirement is contained in Section 4304, General Code, which requires him to be an attorney and counselor at law, duly admitted to practice in this state.

The Ohio School Code contained in Section 4830 et seq., General Code, and specifically Sections 4860 to 4860-9, General Code, contains no provision prohibiting an instructor at a state university from being a city solicitor.

I am therefore of the opinion in specific answer to your question that the positions of city solicitor of Kent, Ohio, and instructor at Kent State University are compatible, providing it is physically possible for one person to perform the duties of both.

Your attention is directed to the provisions of the so-called Hatch Act, of the Federal Government, Title 18, Sections 61 to 61k, inclusive, of the U. S. C. A., which might be an inhibition to such dual employment if the particular department or division of Kent State University, where the instructor referred to in your request is employed, is financed in whole or in part by loans or grants made by the United States or by any federal

agency. In connection therewith, your attention is directed to opinion 2927, Opinions Attorney General, 1940, page 959.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.