

1996.

OFFICES COMPATIBLE—COUNTY COMMISSIONER—INSPECTOR OF  
VILLAGE STREET IMPROVEMENT.

*A county commissioner may legally accept employment by a village as an inspector of the improvement of one of its streets, provided that such employment does not make it physically impossible for the commissioner to perform his duties as such.*

COLUMBUS, OHIO, April 13, 1921.

HON. V. W. FILIATRAULT, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—You have recently submitted for opinion of this department a statement of facts and inquiry which may be summarized as follows:

Certain street improvement work is to be done within the corporate limits of a village in your county. The work embraces not only the improvement of the street itself, but also the construction of certain bridges and culverts. The same contractor is to do both the street work and the bridge and culvert work,—the contract for the street work having been entered into by the village, and for the bridge and culvert work by the county commissioners. The village is furnishing the funds for the street work and the county for the work of building the bridges and culverts. One of your county commissioners is offered employment by the village as an inspector of the street improvement work, though he has no intention of acting as inspector on the bridge and culvert work.

The question is, may such commissioner legally accept such employment?

No statute has been found which would prohibit the employment in question. The only point to be considered then is whether the proposed employment is incompatible with the commissioner's continuing in office as such.

The Ohio rule as to incompatibility has been well stated 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.”

State ex rel. Attorney-General vs. Gebert, 12 O. C. C. (N. S.) 274; 21 O. C. D. 355.

Of course, this rule as stated covers a broader situation than that presented by your inquiry; for it is plain that an inspector of street improvement work is but an employe of the municipality and not an officer. However, applying the principle of the rule to the facts which you present, no reason appears for considering that there is any relationship whatever between employment as a village street inspector and the office of county commissioner. The question then simply comes down to a point of fact whether the taking of the employment will make it physically impossible for the commissioner to perform his duties as such. Such a question, of course, might arise in connection with any employment which the commissioner might seek, whether public or private.

In these circumstances, a categorical answer to your inquiry cannot be given; and all that may be said is that there is no legal objection to the acceptance of the

proposed employment by your county commissioner, provided that such employment will not make it physically impossible for him to perform his duties as county commissioner.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1997.

INHERITANCE TAX LAW—WHAT ARE TAXABLE SUCCESSIONS UNDER WILL WHERE ALL PROPERTY PLACED IN HANDS OF TRUSTEE WITH AUTHORITY TO PAY ENTIRE INCOME TO SON OF TESTATOR AND TO INVADE PRINCIPAL IN EVENT SAME IS NECESSARY FOR SUPPORT OF BENEFICIARY—WHERE SON'S FUNERAL EXPENSES TO BE PAID OUT OF FUND—RESIDUE DISTRIBUTED TO HEIRS AT LAW OF BENEFICIARY OF ISSUE OTHERWISE NEXT OF KIN OF TESTATOR.

*R. died testate. By his will he placed all his property in the hands of a trustee with authority to pay the entire income thereon to the son of the testator or to expend the income for the benefit of such son during his, the son's, natural life. The trustee is clothed also with power to invade the principal in the event that it becomes necessary to do so for the support of the beneficiary. At the son's death his funeral expenses are to be paid out of the fund. The residue is then to be distributed to the heirs at law of the beneficiary, if he should leave any legitimate issue, but if no such issue is left then it is to pass to the next of kin of the testator;*

HELD:

- (1) *The beneficial interest of the son is to be appraised as a life estate.*
- (2) *The charge on account of funeral expenses is to be valued by setting aside a reasonable sum for that purpose at its present worth.*
- (3) *The contingent remainder is to be immediately taxed in the seven per cent class by virtue of section 5343 of the General Code.*

COLUMBUS, OHIO, April 13, 1921.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The commission has requested the opinion of this department as to the manner in which the inheritance tax shall be assessed in connection with successions under a will of which the following is a description:

“R. died testate. By his will he placed all his property in the hands of a trustee with authority to pay the entire income thereon to the son of the testator or to expend the income for the benefit of such son during his, the son's, natural life. The trustee is clothed also with power to invade the principal in the event that it becomes necessary to do so for the support of the beneficiary. At the son's death his funeral expenses are to be paid out of the fund.

The residue is then to be distributed to the heirs at law of the beneficiary, if he should leave any legitimate issue, but if no such issue is left then it is to pass to the next of kin of the testator.”

The equitable life estate is, on principles established by previous opinions of this department, to be valued as a life estate, the power to invade the principal for the