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PROBATION OFFICER—JUVENILE COURT—MAY ALSO ACT AS SCHOOL ATTENDANCE OFFICER—IT MUST BE PHYSICALLY POSSIBLE FOR ONE INDIVIDUAL TO PERFORM DUTIES OF BOTH POSITIONS—SECTION 3321.14 RC.

SYLLABUS:

A probation officer of the juvenile court may lawfully be appointed to act also as school attendance officer of a city school district as provided in Section 3321.14, Revised Code, provided the appointing authorities concerned find it to be physically possible for one individual to perform the duties of both positions.

Columbus, Ohio, March 1, 1956

Hon. John S. Moorehead, Prosecuting Attorney, Guernsey County
Cambridge, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"It is considered desirable by the Cambridge City School District to appoint the Probation Officer of the Guernsey County Juvenile Court, Attendance Officer for said School District.

"We note Section 3321.15 of the Revised Code specifically authorizes a Probation Officer of the Juvenile Court to be designated as County Attendance Officer. The Juvenile Judge is in accord with the appointment of his Probation Officer as said City School Attendance Officer.

"Section 3321.14 of the Revised Code authorizes a City School District to appoint an Attendance Officer and we see nothing incompatible in the holding of the two offices mentioned herein but are wondering if the authorization of the Probation Officer-County Attendance Officer appointment by Section 3321.15 operates to the exclusion of the Probation Officer-City School Attendance Officer appointment."

Section 3321.14, Revised Code, reads in part:

"The board of education of every city school district and of every exempted village school district shall employ an attendance officer, and may employ or appoint such assistants as the board deems advisable. * * *"

Section 3321.15, Revised Code, provides:

"Every county board of education shall employ a county attendance officer, and may employ or appoint such assistants as the board deems advisable. The compensation and necessary traveling expenses of such attendance officer and assistants shall be paid out of the county board of education fund. With the consent and approval of the judge of the juvenile court, a proba-

tion officer of the court may be designated as the county attendance officer or as an assistant. The compensation of the probation officers of the juvenile court so designated shall be fixed and paid in the same manner as salaries of other probation officers of the juvenile court; their traveling expenses as attendance officers which would not be incurred as probation officers shall be paid out of the county board of education fund. In addition to the compensation provided in this section the board may pay such additional compensation as it deems advisable, to any probation officer designated as attendance officer and such additional amount shall be paid from the county board of education fund. The county attendance officer and assistants shall work under the direction of the county superintendent of schools. The authority of such attendance officer and assistants shall extend to all the local school districts which form the county school district. * * *

As indicated in your request, Section 3321.15, Revised Code, expressly authorizes a probation officer of the juvenile court to act as *county* attendance officer or as an assistant provided that such designation meets with the consent and approval of the judge of the juvenile court. On the other hand, no statute appears to contain a provision which expressly permits a probation officer of a juvenile court to act as *city* attendance officer.

With respect to a situation of this kind it has been held that a statute will not be extended to include situations by implication when the language of the statute is specific and not subject to reasonable doubt. See Sutherland, *Statutory Construction*, page 22, section 5402. It has been further held that only necessary implications may be read into a statute, and in order to meet the test, such implication must be so strong in its probability that the contrary thereof cannot be reasonably supposed. Crawford, *Statutory Construction*, page 266, section 168.

It has been emphasized in numerous judicial opinions that in construing statutes it is the *expressed* legislative intent that is of importance and that the law does not concern itself with the legislature's unexpressed intention. 37 Ohio Jurisprudence, 624, section 281. The problem at hand appears to fit within the meaning of the rule just stated in that the General Assembly has not expressed itself with respect to whether a probation officer may also serve as city attendance officer, for I do not consider that the affirmative permission expressed in Section 3321.15, Revised Code, carries with it an implication so strong that the contrary thereof cannot be reasonably supposed.

In view of the foregoing, therefore, I am of the opinion that Section 3321.15, Revised Code, which provides that a juvenile probation officer may be designated as county attendance officer, does not imply that a juvenile probation officer may not be appointed as a city attendance officer.

The next question for determination is whether the two positions in question are compatible in light of the common law test of compatibility. In order to determine this question it is necessary to apply the rule as stated in the case of *State ex rel. v. Gebert*, 12 C.C. (N.S.), 274:

“Officers 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.”

The authority of a city attendance officer is provided for in Section 3321.14, through Section 3321.23, Revised Code. Under the foregoing sections such officer is granted power to investigate any case of non-attendance at school of children under eighteen years of age and is vested with certain police powers as set forth in Section 3321.17, Revised Code. He is under a duty to institute proceedings against such individuals or corporations as are found to be violating laws relating to compulsory education and the employment of minors, and to perform such other services as the superintendent of schools or board of education of the district by which he is employed deems necessary to preserve the morals and secure the good conduct of school children.

The duties and powers of the probation department are set forth in Section 2151.14, Revised Code. They include among others the making of investigations under juvenile court direction, preparing for the court reports and records of the conduct and condition of each person under supervision, serving process, making arrests without warrant upon reasonable information or upon view of the violation of Section 2151.01 to Section 2151.54, inclusive of the Revised Code, and performing such other duties incident to the office as the judge may direct.

A perusal of the statutes pertinent to the duties and authority of each position in question fails to reveal a basis upon which either of these two positions may be said to be subordinate to or a check upon the other. Accordingly, it would follow that the two positions in question are compatible if it is physically possible for one person to discharge the duties

of both. This question of physical possibility is committed, of course, to the discretion of the appointing authorities concerned.

Therefore, I am of the opinion that a probation officer of the juvenile court may lawfully be appointed to act also as school attendance officer of a city school district as provided in Section 3321.14, Revised Code, provided the appointing authorities concerned find it to be physically possible for one individual to perform the duties of both positions.

Respectfully,

C. WILLIAM O'NEILL

Attorney General