

Said bonds have undoubtedly been executed pursuant to the provisions of sections 1182-2 and 1182-3, General Code. Such sections provide, in so far as pertinent here:

"Sec. 1182-2. The director may appoint * * * engineers, inspectors and *other employes* within the limits of the appropriation as he may deem necessary to fully carry out the provisions of this act. * * *"

"Section 1182-3. Each employe or appointee under the provisions of this act, in cases other than where the amount of the bond is herein fixed, may be required to give bond in such sum as the director may determine. All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director, and as to legality and form by the attorney general and be deposited with the secretary of state. * * *"

Finding said bonds to have been properly executed in accordance with the foregoing sections, I have accordingly approved the same as to form, and return them herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2652.

OFFICES COMPATIBLE—DISCUSSION OFFICES COUNTY AUDITOR
AND POSTMASTER.

SYLLABUS:

Compatibility of the offices of county auditor and postmaster discussed

COLUMBUS, OHIO, May 11, 1934.

HON. CARLOS M. RIECKER, *Prosecuting Attorney, McConnellsville, Ohio.*

DEAR SIR:—Your recent inquiry reads as follows:

"Our County Auditor has asked me for an official opinion from your office. He is serving on his second term at this time which will expire March, 1935. On the 24th day of March, 1934, he was recommended by the Democratic Committee of this county for the position as Postmaster at McConnellsville Postoffice which is a second class office. He was one of three candidates who was placed on the eligible list by the Civil Service Commission for this position. Robert Secrest, Congressman of this District, has accepted the selection of the above committee and has sent his recommendation to Washington, D. C., to be confirmed. The present Postmaster's term expires April 1 of this year, and no doubt our present County Auditor will be selected for this position immediately. It will, of course, be necessary

for the auditor to accept the postmaster job and he has asked if it would be necessary for him to resign as County Auditor if he holds the postmaster position. He feels that he has been elected by the people of this county to serve the balance of his term as County Auditor and feels responsible to the people of this county to see that the balance of this term is handled in a satisfactory way to the people of this county.

There is no doubt but what the auditor has some one in view that he will hire to oversee the work in the auditor's office and that he will personally pay this man from his own salary. He will also supervise this work, but it is his intention, of course, to spend his full time at the postoffice and assist at the auditor's office after he has done his duties at the postoffice. The statutes provide that upon the resignation of the auditor of the county the county commissioners shall appoint the auditor to fulfill the unexpired term, but in case the auditor does not resign can he continue to be county auditor and also postmaster of McConnelsville, Ohio, and personally draw the salary of both positions? He feels that he has served the people of this county in a very satisfactory manner and wants to resume the responsibility of the work in the auditor's office until March in 1935."

It has recently been held that the position of postmaster is an office of the United States government. See the case of *State ex. rel. White vs. Mason, et al.*, 17 Louisiana Appeal Reports, 504, 505; 133 Southern Reporter, 809, 810, decided April 9, 1931.

An examination of the Ohio Constitution and statutes discloses no provision which would inhibit an incumbent of the office of county auditor from holding the office of postmaster at the same time. Article II, Section 4, Ohio Constitution, provides that "no person holding office under the authority of the United States * * * shall be eligible to, or have a seat in the General Assembly." Section 11, General Code, states that "no person shall hold at the same time by appointment or election more than one of the following offices: Sheriff, *county auditor*, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, probate judge, and justice of the peace." Finally, section 2565, General Code, provides that "no judge or clerk of a court, county commissioner, county recorder, county surveyor, county treasurer or sheriff shall be eligible to the office of *county auditor*." However, these provisions clearly have no application in the present instance.

In some instances, the legislature has provided in creating certain offices that incumbents of these offices shall devote their entire time to the duties of their offices. For example, see section 154-16, 485-4, 491, 871-3, 980, 1465-3, 2211, 2409 and 7181, General Code. However, there appears to be no provision in the General Code requiring a county auditor to devote his entire time to the duties of the office of county auditor, and hence the legislature has intimated that it would not be against public policy for a county auditor to devote some time to other pursuits while holding the office of county auditor.

It now remains to be determined whether or not these offices are incompatible by reason of the common law. The common law test of incompatibility of offices

has been aptly expressed in the case of *State ex rel vs. Gebert*, 12 C. C. (N. S.) 274, 21 C. D. 355. It is stated in such case at page 356:

“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.”

A perusal of the statutory duties of the office of county auditor reveals no incompatibility under the common law test of incompatibility. Concerning the question of whether or not it is physically possible for the county auditor to transact the duties of the offices of county auditor and postmaster at one and the same time, it has been held by this office in several recent opinions, Nos. 338, 860, 1354 and 2289, rendered under dates of March 23, May 23, and August 8, 1933, and February 16, 1934, respectively, that this question is one of fact rather than of law.

Although, as above indicated, it might very possibly be contended that the Ohio law would not prohibit under all circumstances a county auditor from continuing to hold such office while serving as postmaster, it becomes necessary to consider whether or not this would be violative of federal laws and regulations.

Section 39 of the postal laws and regulations, edition of 1932, page 27, provides as follows:

39. “No person in the classified civil service and holding a position under the Post Office Department shall accept or hold any elective office under any State, Territorial, or municipal government (including the offices of alderman, councilman, etc.), even though no compensation may attach thereto, and no such person shall accept or hold such office by appointment to fill an unexpired term. Exception is made in the case of a fourth-class postmaster who is a candidate for or holds an elective position of an educational nature such as a member of a school board, school committee, etc., and it is permissible for a fourth-class postmaster to accept or hold such office provided no political issues are involved and no campaign is made for the position.

2. A postmaster at an office of the first, second, or third class shall not become a candidate for, nor hold any office, under state, county, or municipal government where it would, in the judgment of the department, interfere with the proper performance of his post-office duties.

3. A person in the Postal Service may be appointed (not elected) to the office of notary public, commissioner to take acknowledgment of deeds or administer oaths, or hold a commission in State or Territorial militia, or may accept an appointive position in a local or municipal fire department without compensation, or on a school committee, board of education, public library, or religious or eleemosynary institution incorporated or sustained by State or municipal authority, but will not be permitted to hold such an office or position if it interferes with his duties in the postal Service.”

It is obvious, in view of the foregoing section of the postal laws and regulations that the postoffice department must pass upon the question of

whether or not the holding of the office of county auditor in the instant case would interfere with the proper performance of the auditor's duties as postmaster. This is of course a question that must be answered by the proper federal authorities, and it is accordingly improper for the Attorney General to render an opinion thereon. It is believed that a more specific answer to your question may not be given.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2653.

WORKMEN'S COMPENSATION LAW—UNDER H. B. 110 2ND
 SPECIAL SESSION OF 90TH GENERAL ASSEMBLY INDUSTRIAL
 COMMISSION EMPOWERED TO APPOINT EMPLOYES TO AD-
 MINISTER SAID LAW.

SYLLABUS:

1. *On May 15th, 1934, the Industrial Commission of Ohio will have power to appoint all the necessary employees as provided for in House Bill No. 110 of the Second Special Session of the 90th General Assembly, subject to the provisions of the Civil Service Law of the State of Ohio, as it may find necessary to carry on the work of administering the Workmen's Compensation Law.*

2. *The employees now in the employ of the Department of Industrial Relations will remain employees of that department so long as it has use for their services.*

3. *There is no provision in said House Bill No. 110 whereby any of the present employees of the Department of Industrial Relations are to be transferred to the Industrial Commission of Ohio.*

COLUMBUS, OHIO, May 11, 1934.

The Industrial Commission of Ohio, Columbus, Ohio.

DEAR SIRS:—This will acknowledge receipt of your request for my opinion which reads as follows:

"We wish to call your attention to House Bill No. 110, recently enacted by the Legislature, conferring new duties upon The Industrial Commission of Ohio, especially that part of the bill referring to the appointment of employes upon the taking effect of this Act.

"We should like your opinion as to whether or not the Industrial Commission has power, upon the taking effect of this Act, to appoint all the employes which it deems necessary to administer the Workmen's Compensation Law, or do the present employes of the Department of Industrial Relations, who have been serving in the Division of Workmen's Compensation, retain their positions under the Industrial Commission after the taking effect of the said Act."