

Note from the Attorney General's Office:

1971 Op. Att'y Gen. No. 71-005 was disapproved by
1973 Op. Att'y Gen. No. 73-082.

OPINION NO. 71-005**Syllabus:**

The offices of county judge of the county court and assistant city solicitor of a municipality in an adjoining county are compatible, provided it is physically possible for one person to discharge the duties of both offices.

To: Reynold C. Hoefflin, Greene County Pros. Atty., Xenia, Ohio
By: Paul W. Brown, Attorney General, January 6, 1971

I have your request for my opinion regarding the compatibility of the offices of county judge of Greene County and full time assistant city solicitor for the City of Dayton, which is a municipality in an adjoining county.

Section 1907.051, Revised Code, to which you refer in your request, does not indicate that a county judge may hold no other office.

The rule of incompatibility in office is stated in the case of State, ex rel. Attorney General v. Gebert, 12 Ohio C.C.R., 274, 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 is necessary to first determine whether the offices of county judge of Greene County and assistant city solicitor for the City of Dayton, which is in an adjoining county, are subordinate one to the other, or are "in any way a check upon, the other."

Section 1907.011, Revised Code, outlines the territorial jurisdiction of the county court, as follows:

"There is thereby created in each county of the state, in which the territorial jurisdiction of a municipal court or municipal courts is not coextensive with the boundaries of the county, a court to be known as the county court with jurisdiction throughout a county court district consisting of all territory within the county not subject to the territorial jurisdiction of any municipal court."

(Emphasis added.)

It is clear that a county court's jurisdiction does not extend beyond the boundaries of the county.

The powers and duties of a city solicitor are delineated in Section 733.51, Revised Code:

"The city solicitor shall prepare all contracts, bonds, and other instruments in writing in which the city is concerned, and shall serve the several directors and officers provided in Title VII of the Revised Code as legal counsel and attorney.

"Such solicitor shall be prosecuting attorney of the police or mayor's court. When the legislative authority of the city allows assistants to the solicitor, he may designate such assistants to act as prosecuting attorneys of the police or mayor's court. The person designated shall be subject to the approval of the legislative authority."

However, Section 1907.081, Revised Code, provides in part:

"A judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in said county court during his term of office."

Since the City of Dayton is outside the jurisdiction of the county court of Greene County, it appears that neither the office of assistant city solicitor for the City of Dayton nor the office of county judge of Greene County are "subordinate to, or in any way a check upon, the other."

Thus, under Gebert, supra, the question remains whether it is "physically impossible for one person to discharge the duties of both." You have stated that the person is a full-time assistant city solicitor. Considering that the person was hired as a full-time legal assistant for the City of Dayton and was elected to the position of county judge of Greene County with the confi-

dence that he would devote his best efforts to each position, and considering that he must perform the duties of each office in different counties, there exists some question as to whether it is physically possible for one person to discharge the duties of both offices. However, if the person can perform the duties of each office, the positions are not incompatible.

Therefore, it is my opinion and you are advised that the offices of county judge of the county court and assistant city solicitor of a municipality in an adjoining county are compatible, provided it is physically possible for one person to discharge the duties of both offices.