

OPINION 65-6

Syllabus:

The position of county court judge and the position of county law librarian are incompatible.

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To: James I. Shaw, Auglaize County Pros. Atty., Wapakoneta, Ohio
By: William B. Saxbe, Attorney General, January 12, 1965

I have before me your request which reads as follows:

"I have been requested to obtain your formal opinion as to whether the offices of County Court Judge and Librarian of the County Law Library Association are compatible.

"Our former Librarian of the County Law Library Association recently passed away and one of the applicants for this position is one of the County Court Judges of this County.

"Will you therefore advise me, at your early convenience, if the Judge of this County Court could also serve as Librarian of the County Law Library?"

Section 3375.48, Revised Code, provides that the board of trustees of the county law library association appoint the county law librarian and that the judges of the court of common pleas in that county fix his salary. That section reads:

"The judges of the court of common pleas of any county in which there is a law library association which furnishes to all of the members of the Ohio general assembly, the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, upon the appointment by the board of trustees of such association of a person to act as librarian thereof, or of a person to act as librarian and not more than two additional persons to act as assistant law librarians thereof, shall fix the compensation of such persons, which shall be paid from the county treasury. In counties where not more than one judge of the court of common pleas holds regular terms of court at the same time, the compensation to be paid such librarian shall not exceed the sum of five hundred dollars per annum."

Section 3375.51, Revised Code, as amended by House Bill No. 1, 1961, provides as follows:

"In each county fifty per cent of all moneys collected by Judges of the county court of such county, accruing from fines, penalties, forfeited recognizances, and forfeited cash deposits, unless otherwise distributed by law, shall be paid to the board of trustees of the law library association of such county by the county treasurer, upon the voucher of the county auditor within thirty days after such moneys have been paid into the county treasury by such judges."

The money received by the board of trustees of a law library association is to be used for the maintenance of the library. Section 3375.54, Revised Code, provides:

"The money paid to the board of trustees of a law library association under sections 3375.50 to 3375.53, inclusive, of the Revised Code, shall be expended in the purchase of lawbooks and in maintenance of such law library association."

Since fifty per cent of all fines, etc., levied and collected by the county court judge may go to the board of trustees of the county law library association for the pur-

pose of maintaining the library, the county judge is in a position to influence the operating budget of the law library in the exercise of his discretion as to whether fines, etc., should be imposed.

This possibility brings these two positions within the reach of the rule expressed in State, ex rel. Baden v. Gibbons, 17 Ohio Law Abs. 341, headnote six:

"One person may not hold two positions of public employment when the duties of one may be so administered that favoritism and preference may be accorded the other, and result in the accomplishment of purposes and duties of the second position which otherwise could not be effected."

Accordingly, it is my opinion and you are advised that the position of county court judge and the position of county law librarian are incompatible.