

In reply to your inquiry you are advised that the provisions of Section 4946 G. C. as to the election expenses mentioned therein apply only to cities in which registration actually is required and the cities of the state which had a population of Eleven Thousand Eight Hundred and less than One Hundred Thousand, as announced in the proclamation of the secretary of state on January 21, 1921, do not begin their share of the election expenses provided under Section 4946 G. C. until the presidential year of 1924.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3779.

DEPUTY COUNTY AUDITOR— MAY NOT BE LEGALLY APPOINTED
CLERK OF COUNTY BUDGET COMMISSION AND RECEIVE COM-
PENSATION FOR BOTH POSITIONS.

A deputy county auditor may not be legally appointed as clerk of the county budget commission and receive compensation therefor in addition to his salary as such deputy county auditor.

COLUMBUS, OHIO, December 1, 1922.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following question:

“May a deputy county auditor be legally appointed as clerk of the county budget commission and receive compensation therefor in addition to his salary as such deputy auditor?”

In a personal conversation with a representative of your department this department is advised that this is a case where a deputy county auditor received compensation as clerk of the county budget commission while on the same day or days he received his salary as deputy county auditor.

The section of the General Code which is pertinent to your inquiry is Section 5649-3b, which reads in part as follows:

“There is hereby created in each county a board for the annual adjustment of the rates of taxation and fixing the amount of taxes to be levied therein, to be known as the budget commissioners, the county auditor, the county treasurer and the prosecuting attorney, shall constitute such board * * *. The auditor shall be the secretary of the board and shall keep a full and accurate record of all proceedings. *The auditor shall appoint such messengers and clerks as the board deems necessary*, who shall receive not to exceed three dollars per day for their services for the time actually employed, which shall be paid out of the county treasury. The budget commissioners shall be allowed their actual and necessary expenses. * * *.”

The authority of a deputy appears in Section 9 G. C., which reads:

“A deputy, when duly qualified, may *perform all and singular the duties of his principal* * * *”.

You do not indicate in your inquiry as to whether the entire time of the person is required in either of the two employments; for an opinion of this department upon the question as to where an employe is required to devote his entire time in one employment for the public, see opinion No. 65 appearing at page 1096, volume 2, Opinions of the Attorney General for 1914, where it was held that the clerk of the county commissioners appointed under 2409 G. C. may not serve as deputy county auditor.

It is noted that the sentence in Section 5469-3b, which authorized an auditor to appoint messengers and clerks as the board deems necessary is almost an exact counterpart of the language which appeared in Section 5581 G. C. (repealed 107 O. L. 29) that section being a portion of the statutes governing the annual county board of equalization later succeeded by the present county board of revision. Apparently Section 5581 G. C. must have been used as a model in drawing the sentence in 5469-3b G. C. to which attention has been invited for Section 5581 G. C. provided that:

“The auditor shall appoint such * * * clerks as the board deem necessary, who shall receive not to exceed three dollars per day for their services for the time actually employd which shall be paid out of the county treasury.”

The above language appeared in old 5581 G. C. and was passed upon by the Attorney General in 1910 in an opinion appearing at page 696 Annual Report of the Attorney General 1910-11, wherein the then Attorney General held that the deputy county auditor may not act as clerk of the board of equalization. Thus the following language is used:

“Inasmuch as the auditor is himself a member of the board and the appointing authority under Section 5581, I am clearly of the opinion that the auditor cannot appoint himself as clerk of the annual county board, *nor can he appoint one of his deputies* to serve in that capacity.”

It appears in section 5649-3b G. C. that the county budget commission must first deem it necessary that messengers and clerks are needed in addition to the auditor who shall be the secretary of the board and if they are deemed necessary then the auditor shall appoint such messengers and clerks. Apparently this authority is intended for use in the more populous counties of the state where the tax duplicates would be unusually large. The intent of Section 5649-3b G. C. appears to be that these messengers and clerks shall be persons other than the deputies or employes of the county auditor, who are already being paid in one capacity by the county auditor, who is secretary of the county budget commission, and you are therefore advised in answer to your inquiry that a deputy county auditor may not be legally appointed as clerk of the county budget commission and receive compensation therefor in addition to his salary as such deputy county auditor.

Respectfully,
JOHN G. PRICE,
Attorney-General.