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ONE PERSON MAY SERVE AS AN UNCLASSIFIED EMPLOYEE (NON DEPUTY) OF THE COUNTY AUDITOR AND SERVE AS MAYOR OF A VILLAGE IN THE COUNTY, IF IT IS PHYSICALLY POSSIBLE TO PERFORM BOTH DUTIES.

SYLLABUS:

One person may at the same time serve as an unclassified employee of the county auditor, appointed pursuant to Section 325.17, Revised Code, not a deputy county auditor, and as mayor of a village in the county, elected pursuant to Section 733.24, Revised Code, if it is physically possible for one person to perform the duties of both positions.

Columbus, Ohio, February 2, 1962

Hon. Richard E. Bridwell, Prosecuting Attorney
Muskingum County, Zanesville, Ohio

Dear Sir:

In your request for my opinion you ask whether one person may simultaneously hold the positions of employee in the county auditor's office and mayor of a village in the county. You state that said person is not a deputy auditor, and that his duties are concerned chiefly, if not wholly, with the payment of bills and the writing of payroll, relief, and other

miscellaneous checks for the payment of bills incurred by the various offices and agencies of the county.

It is not stated whether the position of auditor's employee is in the classified service. If so, then the positions are incompatible by reason of Section 143.41, Revised Code, which section precludes a classified employee from engaging in political activity. For the purposes of this opinion, however, I will assume that the position of auditor's employee is not in the classified service.

Under Section 325.17, Revised Code, the county auditor is authorized to appoint necessary employees. The mayor of a village is elected pursuant to Section 733.24, Revised Code.

I have not found any statute which would specifically preclude a person from serving in both of the positions here concerned. Thus, for answer, I must turn to the test of incompatibility most commonly applied in Ohio. This rule is stated in *State, ex rel. Attorney General vs. Gebert*, 12 O.C.C. (N.S.), 274, 275, 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.”

The only possible point of contact here involved which could suggest a possibility of incompatibility is in the preparation of the annual budget of the village and the role of the county budget commission in such preparation, the county auditor being a member of said commission. As stated in Opinion No. 2999, Opinions of the Attorney General for 1953, page 391, beginning at page 392:

“In the event that the budget commission should be inclined to make certain adjustments in a village budget, as provided in this section, it is impossible to suppose that the village mayor would not be keenly interested in the matter since it is under his executive supervision that a considerable portion of the village revenues are expended. Accordingly, if the commission should propose to reduce such budget below the amounts requested by the village authorities, it could well happen that the mayor would wish to appear before the commission to defend the estimates originally submitted. In this situation it is apparent that the office of county auditor is a check on that of the mayor and that the two are clearly incompatible.”

In said Opinion No. 2999, the then Attorney General went on to hold that, since a deputy county auditor acts for and in the place of the auditor and may perform all and singular the duties of the auditor, the positions of deputy auditor and village mayor in the same county are incompatible.

While I might be constrained to agree with my predecessors as to the positions of deputy auditor and village mayor conflicting because of the budget commission duties, I do not believe that such a conflict would exist as to an employee such as here concerned. Such an employee, not being a deputy auditor, cannot act for the auditor and would have no connection with the budget commission other than possible purely ministerial duties that might be assigned by the auditor.

Further, I have found no other duties of either the employee of the auditor or of the village mayor which would cause the two positions to be incompatible.

As to the question of physical possibility, that is a question of fact which I am not in a position to determine.

Accordingly, it is my opinion and you are advised that one person may at the same time serve as an unclassified employee of the county auditor, appointed pursuant to Section 325.17, Revised Code, not a deputy county auditor, and as mayor of a village in the county, elected pursuant to Section 733.24, Revised Code, if it is physically possible for one person to perform the duties of both positions.

Respectfully,

MARK McELROY

Attorney General