

In view of the above, I am compelled to the conclusion that the sheriff of Marion County is authorized to serve processes from the Marion municipal court. Whether or not the county should receive the fees in the event the sheriff has served such processes, depends upon the authority of the sheriff to serve them. It is well settled that a public officer cannot receive any additional compensation, by reason of the fact that additional duties are imposed upon him or assumed by him, unless the legislature has expressly provided that such additional compensation may be paid. *Anderson vs. Commissioners*, 25 O. S. 13; *Swartz vs. Commissioners*, 54 O. S. 669; *Rogers vs. Cincinnati*, 6 O. A. 218.

In view of the above, and in specific answer to your question, it is my opinion that the sheriff of Marion County may serve the processes of the Marion Municipal Court only in civil cases and then only where such service is made in Marion County but outside the limits of the city and township of Marion. The sheriff serving such processes is entitled to the statutory fees for such services which are to be paid into the county treasury.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

860.

OFFICES INCOMPATIBLE—DEPUTY COUNTY AUDITOR WHO IS DEPUTY SEALER OF WEIGHTS AND MEASURES CANNOT BE MEMBER OF COUNTY BOARD OF ELECTIONS SIMULTANEOUSLY—DEPUTY SEALER OF WEIGHTS MAY BE MEMBER OF COUNTY BOARD OF ELECTIONS.

SYLLABUS:

1. *A deputy county auditor who is also acting as deputy sealer of weights and measures may not hold the office of member of a county board of elections simultaneously.*

2. *A deputy sealer of weights and measures may hold the office of member of a county board of elections at the same time, providing it is physically possible for one person to transact the duties of such office and position simultaneously.*

COLUMBUS, OHIO, May 23, 1933.

HON. F. MERCER PUGH, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication which reads as follows:

"I would like to submit the following questions for your consideration and decision in regard to section 4785-16 or any other sections of the Code having a bearing on these questions:

(1) Whether a person holding the position of deputy auditor, deputy sealer of weights and measures is compatible to the position of being a member of the County Election Board.

(2) Whether a person holding the position of deputy sealer of weights and measures is compatible to that of holding a position as that of member of the County Election Board."

I assume that the position of deputy auditor to which you refer is the position of deputy county auditor, rather than deputy city auditor, and that the deputy county auditor and deputy sealer of weights and measures are not in the classified service.

In an opinion, reported in Opinions of the Attorney General for 1929, volume III, page 1984, it was held as disclosed by the syllabus:

"The offices of deputy county auditor and member of the board of deputy state supervisors of elections are incompatible."

The office of member of the board of deputy state supervisors of elections under consideration in the foregoing opinion, has been abolished since the rendition of said opinion. However, the office of member of a county board of elections, established by section 4785-8, General Code, passed in 1929, is very similar to the old office of member of the board of deputy state supervisors of elections.

In the opinion hereinbefore referred to, the then Attorney General stated at pages 1984 and 1985, after quoting section 2563, General Code, which section provides for the appointment of a deputy county auditor by the county auditor:

"Section 9, General Code, reads, in part:

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

In 1920 (Opinions of the Attorney General for 1920, Vol. II, page 1280), the then Attorney General held:

"The office of county auditor is incompatible with any and all offices or employments which receive or pay out funds of the county, or where such offices or employments make a certificate to the county auditor for the payment of claims, and the county auditor cannot fill a second position when the duties of said second position or office require the incumbent to account for, receive or expend moneys or funds of the county, or to certify claims to the county auditor for payment.'

I concur in this view and am of the opinion that the same rule should apply in establishing the incompatibility between the office of deputy county auditor and the office of member of the board of deputy state supervisors of elections.

Under Section 4970-1, General Code, the board of deputy state supervisors of elections receives the fees paid by all candidates for office who enter a primary. These fees shall then be paid 'by the officer receiving same into the treasury of his county to the credit of the county fund.' It would thus appear that if the deputy auditor of a county is also a member of the board of elections in the same county, he might receive these fees as a member of the board of elections, and, in the process of paying the same into the treasury as deputy auditor, certify to the correctness of such transaction.

It is true that in the smaller counties these fees might amount to a very small total, but any rule laid down would have to fit the larger counties as well as the smaller ones, because Section 4970-1, supra, is a

law of a general nature, applying to all counties, regardless of size or whether there is a registration city in the county or not.

Attention will now be given to the question as to whether the auditor accounts for or expends moneys where the claims have been certified to the county by the board of elections. Section 4822, General Code, provides that each deputy state supervisor of elections shall receive Three Dollars (\$3.00) for each election precinct in his county, such compensation to be paid quarterly from the general revenue fund of the county upon vouchers of the board, and that upon presentation of such vouchers the county auditor shall issue his warrant.

For a discussion of other sections which would make the offices incompatible see the 1920 opinion hereinbefore referred to.

Sections 2568, 2569 and 2570, General Code, provide that the county auditor shall keep an accurate account of all moneys received and paid by the county treasurer, and issue warrants on the county treasurer for all moneys payable from such treasury except money due the state, upon proper voucher or vouchers therefor.

Under Section 2563, supra, deputies aid the county auditor in performance of his duties, and it is a matter of common knowledge that they frequently have authority to issue warrants and sign the auditor's name thereto.

The common law rule of incompatibility as stated in the case of *State ex rel. vs. Gebert*, 12 C.C. (N.S.) 274, is 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 will be readily seen from the above that no one person under any condition can hold two positions when one is a check upon the other unless specifically authorized by statute."

It is to be noted that section 4785-73, General Code, contains similar provisions to those contained in former section 4970-1, General Code, which was repealed in 1929. It is provided in section 4785-73, General Code, that the county board of elections receive fees paid by candidates for office who enter a primary. These fees are then required to be paid "into the treasury of the county to the credit of the general county fund." Following the reasoning of my immediate predecessor as contained in his opinion, if the deputy auditor of a county would also be a member of the county board of elections he might receive the primary fees as a member of the county board of elections, and in the process of paying the same into the treasury as deputy auditor, certify to the correctness of such transaction.

Moreover, section 4785-18, General Code, provides for the payment of compensation to members of a county board of elections, which salary is based on population of a county, and, like former section 4822, General Code, mentioned in the 1929 opinion, provides that such compensation is to be paid from the general revenue fund of the county upon vouchers certified by the chairman of the board of elections or a member of the board designated by it, and that upon presentation of such voucher, the county auditor shall issue his warrant.

Finally, sections 2563, 2568, 2569 and 2570, General Code, mentioned in the 1929 opinion are still in force. Hence, I am of the view, following the opinion

of my immediate predecessor, that the position of a deputy county auditor and office of member of a county board of elections are incompatible.

Your first question, however, involves the matter of a deputy county auditor, deputy sealer of weights and measures, serving as member of a county board of elections. Section 2622, General Code, provides as follows:

“Each county sealer of weights and measures shall appoint by writing under his hand and seal, a deputy who shall compare weights and measures wherever the same are used or maintained for use within his county, or which are brought to the office of the county sealer for that purpose, with the copies of the original standards in the possession of the county sealer, who shall receive a salary fixed by the county commissioners, to be paid by the county, which salary shall be instead of all fees or charges otherwise allowed by law. Such deputy shall also be employed by the county sealer to assist in the prosecution of all violations of laws relating to weights and measures.”

With reference to the above section, it was stated in the syllabus of an opinion, reported in Annual Report of the Attorney General for 1911-12, volume I, page 162, as follows:

“County auditor in his capacity as sealer of weights and measures may appoint his deputy auditor to serve in the capacity of deputy sealer of weights and measures.”

I assume you have reference in your first specific question to a situation where a single deputy county auditor is designated under section 2622, General Code, as deputy sealer of weights and measures. Obviously, since the position of deputy county auditor and office of member of the county board of elections are incompatible, a deputy county auditor who is performing the duties of a deputy sealer of weights and measures also, could not hold the office of member of the county board of elections at the same time. Consequently, I am of the opinion, in specific answer to your first question, that a deputy county auditor who is also acting as deputy sealer of weights and measures may not hold the office of member of the county board of elections at the same time.

Coming now to your second specific question, a county auditor is authorized to “appoint one or more deputies to aid him in the performance of his duties.” See section 2563, General Code. Under section 2615, General Code, the county auditor is the county sealer of weights and measures, by virtue of his office of county auditor. Section 2622, heretofore quoted, states that the county auditor shall appoint a deputy to transact duties with reference to weights and measures. If the deputy auditor appointed under section 2622, General Code, is appointed solely to transact duties connected with weights and measures, it is obvious that the 1929 opinion of the Attorney General would not prevent him from serving as member of a county board of elections at the same time. There is nothing in the statutes expressly prohibiting a deputy sealer of weights and measures from holding the office of member of a county board of elections at the same time, and such position and office would not, in my opinion, be incompatible under the common law doctrine as expressed in the Gebert case mentioned in the 1929 opinion. A study of the sections of the General Code providing for the duties of a deputy sealer of weights and measures does not disclose any conflict of duties with those of the duties of a member of the county board of elections.

The only question remaining would be as to whether or not it is physically possible for a deputy sealer of weights and measures to perform the duties of member of a county board of elections simultaneously. In my opinion No. 338, rendered March 23, 1933, I held that it is a question of fact to be determined whether it is physically possible for one person to perform the duties of deputy sealer of weights and measures and agent of a humane society. Therefore, it is a question of fact to be determined in the present instance whether it is physically possible for a deputy sealer of weights and measures to perform the duties of member of a county board of elections at the same time. Hence, in specific answer to your second question, I am of the opinion that a deputy sealer of weights and measures may hold the office of member of a county board of elections at the same time, providing it is physically possible for one person to transact the duties of said office and position.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

861.

COUNTY COMMISSIONERS—UNAUTHORIZED TO RESCIND RESOLUTION AUTHORIZING SALARY OF COUNTY HUMANE AGENT—RESOLUTION NULLITY WHEN APPROPRIATION REQUIRED BY STATUTE.

SYLLABUS:

1. *When the board of county commissioners, in compliance with the requirements of Section 10072, General Code, has made an appropriation of an amount of money sufficient to pay to the county humane agent as salary the minimum amount permitted by the provisions of such section, the county commissioners thereafter, have no authority to rescind the resolution making such appropriation.*
2. *The adoption of a resolution by a board of county commissioners purporting to rescind, annul and vacate an appropriation of an item for which they were required by statute to appropriate the specific sum appropriated is a nullity, and such resolution, so adopted, is of no effect.*

COLUMBUS, OHIO, May 23, 1933.

HON. JOHN F. PORTER, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

“The Board of Commissioners of L County, Ohio, in its annual appropriations for the year 1933, appropriated \$300.00 for the salary of Humane Officer.

Subsequently, on the 24th day of February, 1933, the Board of Commissioners took the following action, as shown by the journal record of its proceedings.

‘A motion was made by Mr. M that the \$300.00 appropriation made for the Humane Society be cancelled, and that the Clerk notify the Prosecuting Attorney to file an injunction, or whatever proceedings