

**Note from the Attorney General's Office:**

1962 Op. Att'y Gen. No. 62-2879 was overruled by  
1978 Op. Att'y Gen. No. 78-022.

2879

THE ELECTED POSITION OF TOWNSHIP TRUSTEE IS INCOMPATIBLE WITH THE POSITION OF COUNTY DOG WARDEN—§143.41 R.C., AMEND H.B. NO. 135, 104, OPINION 1014 OAG, 1951, OPINION NO. 338, OAG, 1933, OPINION NO. 862, OAG, 1951.

**SYLLABUS:**

The elective position of township trustee (Section 505.01, Revised Code) is incompatible with the positions of county dog warden and deputy county dog warden (Section 955.12, Revised Code) by reason of Section 143.41, Revised Code, which prohibits classified civil service employees from engaging in political activity; said positions of county dog warden and deputy county dog warden being in the classified civil service of the county under Section 143.08, Revised Code.

Columbus, Ohio, March 17, 1962

Hon. William H. Weaver, Prosecuting Attorney  
Williams County, Bryan, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Is it premissible under the law for a Township Trustee to hold the position of County Dog Warden or Deputy Dog Warden?”

“The Dog Warden of Williams County, Ohio, recently fell and broke his hip, and will be incapacitated for some period of

time. There is an individual in the County who is presently serving as a Township Trustee and who is interested in being appointed at this time as Deputy Dog Warden and eventually being appointed as Dog Warden. Therefore, my question on which I am requesting your formal opinion is whether it is compatible or incompatible for a Township Trustee to hold the position as Dog Warden or Deputy Dog Warden."

A member of a board of township trustees is elected for a four-year term (Section 505.01, Revised Code) and has duties relating strictly to the township. Under Section 955.12, Revised Code, the board of county commissioners appoints or employs a county dog warden and necessary deputies. The duties of the dog warden are to enforce the laws pertaining to the registration of dogs, and such duties are of a county-wide nature.

I have found no specific statute making the positions here considered incompatible, nor do I believe that either position is a check upon, or subordinate to, the other so as to make them incompatible under the common-law rule. In view of the provisions of Section 143.41, Revised Code, banning political activity by public employees in the classified service, however, I am constrained to conclude that the positions are incompatible. Said Section 143.41 reads in pertinent part as follows:

"No officer or employee in the classified service of \* \* \* the several counties \* \* \* shall \* \* \* be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions."

On reviewing the provisions of Section 143.08, Revised Code, as relating to the civil service of the several counties, it appears that the positions of dog warden and of deputy dog warden are in the classified civil service of the county (see Opinion No. 4459, Opinions of the Attorney General for 1932, page 816; Opinion No. 862, Opinions of the Attorney General for 1951, page 656). And in arriving at this conclusion, I am aware of the language of division (A) (9) of said Section 143.08 as amended by Amended House Bill No. 135 of the 104th General Assembly, effective, September 16, 1961, and reading:

"\* \* \* \* \* \* \* \* \*"

"(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by sections 143.01 to 143.48, inclusive, of the Revised Code:

"\* \* \* \* \* \* \* \* \*"

“(9) The deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals, or holding a fiduciary relation to such principals and those persons employed by and directly responsible to elected county officials and holding a fiduciary or administrative relationship to such elected county officials, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided, that this sub-paragraph shall not affect those persons in county employment in the classified service as of the effective date of this act. Nothing herein shall be construed to apply to any position in a county department of welfare created pursuant to sections 329.01 to 329.10, inclusive, of the Revised Code.

“\* \* \*

\* \* \*

\* \* \*”

As to this language, I do not believe that the positions in question fall within its provisions.

The positions of dog warden and deputy dog warden being in the classified civil service, the next question is whether holding the elective office of township trustee amounts to taking part in politics within the meaning of Section 143.41, *supra*.

Past opinions of this office have consistently held that a person holding an elective office is engaging in politics, even though the office is of a non-partisan nature, such as the office of township trustee. For example, in Opinion No. 1014, Opinions of the Attorney General for 1951, page 854, the then Attorney General held in the syllabus:

“Section 486-23, General Code, has the effect of prohibiting the same person from holding concurrently the offices of township trustee and prison guard at the Ohio Penitentiary.”

(Section 486-23, General Code, was the predecessor of present Section 143.41, Revised Code)

Also see Opinion No. 3398, Opinions of the Attorney General for 1931, page 922, dealing with a duly elected township constable; Opinion No. 844, Opinions of the Attorney General for 1957, page 344, dealing with an elected township clerk; and Opinion No. 223, Opinions of the Attorney General for 1959, page 110, dealing with an elected township trustee.

Further significant in the instant question are two former opinions dealing specifically with the position of county dog warden. In Opinion No. 338, Opinions of the Attorney General for 1933, page 360, the first paragraph of the syllabus reads:

"1. The county dog warden is prohibited by the civil service laws from accepting employment as deputy sealer of weights and measures. Accepting such public employment would amount to taking part in politics, in violation of section 486-23, General Code.

"\* \* \*

\* \* \*

\* \* \*"

In Opinion No. 862, Opinions of the Attorney General for 1951, page 656, the syllabus reads:

"1. A person who is appointed dog warden of a county is by virtue of Section 486-8, General Code, in the classified service and, under the provisions of Section 486-23, General Code, is forbidden to take any part in politics, except to vote as he pleases and to express his political opinions.

"2. Holding an appointment as deputy sheriff amounts to taking part in politics within the contemplation of Section 486-23, General Code, and a deputy sheriff, accordingly, is ineligible to hold the position of county dog warden."

In view of the foregoing, therefore, it is my opinion and you are advised that the elective position of township trustee (Section 505.01, Revised Code) is incompatible with the positions of county dog warden and deputy county dog warden (Section 955.12, Revised Code) by reason of Section 143.41, Revised Code, which prohibits classified civil service employees from engaging in political activity; said positions of county dog warden and deputy county dog warden being in the classified civil service of the county under Section 143.08, Revised Code.

Respectfully,

MARK McELROY

Attorney General