

Note from the Attorney General's Office:

1963 Op. Att'y Gen. No. 63-25 was questioned by
2001 Op. Att'y Gen. No. 2001-027.

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SYLLABUS:

The offices of an assistant prosecuting attorney and legal counsel for a township within the same county are incompatible and may not be held concurrently by the same person.

Columbus Ohio, February 6, 1963

Hon. Joseph Loha
Prosecuting Attorney
Jefferson County
Court House Annex
Steubenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under Revised Code 309.09, may an assistant prosecuting attorney be appointed legal counsel for a township in the same county?”

Section 309.09, Revised Code, reads as follows:

“The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections,

and all other county officers and boards, including all tax supported public libraries, and any of them may require written opinions or instructions from him in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party, and no county officer may employ any other counsel or attorney at the expense of the county, except as provided in section 305.14 of the Revised Code.

“Such prosecuting attorney shall be the legal adviser for all township officers. When the board of township trustees deems it advisable or necessary to have additional legal counsel it may employ an attorney other than the prosecuting attorney of the county, either for a particular matter or on an annual basis, to represent the township and its officers in their official capacities and to advise them on legal matters. No such counsel or attorney may be employed, except on the order of the board of township trustees, duly entered upon its journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.”

Section 309.06, Revised Code, which authorizes the prosecuting attorney of a county to appoint assistants, reads in part as follows:

The prosecuting attorney may appoint such assistants, clerks, and stenographers as are necessary for the proper performance of the duties of his office and fix their compensation, not to exceed, in the aggregate, the amount fixed by the judges of such court. Such compensation, after being so fixed, shall be paid to such assistants, clerks, and stenographers monthly, from the general funds of the county treasury, upon the warrant of the county auditor.”

It is immediately apparent that the prosecuting attorney is by law the legal adviser for all township officers within the county unless a board of township trustees has, in the manner provided by law, employed “an attorney other than the prosecuting attorney of the county.” The language of Section 309.09, Revised Code, precludes the possibility that one person could at one time serve both as the prosecuting attorney of a county and the duly employed attorney for a board of township trustees within such county.

The powers and duties of the prosecuting attorney are set out in the appropriate sections of Chapter 309., Revised Code. I find no specific language in the law which directs that the duties of a duly appointed assistant prosecuting attorney shall be other than to

assist in all of the duties of the office of the elected official by whom he has been appointed, such duties to be carried out under the supervision of his superior. This being true, an assistant prosecuting attorney could, it seems, in many instances be called upon in the course of the duties of his employment to give legal advice and counsel to a board of township trustees.

A question somewhat similar to that which you have asked was considered by me in Opinion No. 1380, Opinions of the Attorney General for 1957, page 715, in which I held that the offices of veterans service officer and an assistant prosecuting attorney are incompatible and may not be held concurrently by the same person. In that opinion reference was made to and language was quoted from Opinion No. 4130, Opinions of the Attorney General for 1948, page 594, and it was pointed out that the 1948 opinion reads in part as follows:

“It appears very clear that the person who is by law the legal adviser of a board could not be appointed by that board to a responsible position without violating the generally accepted rules as to incompatibility of offices. As such legal adviser it would manifestly be within his power to advise the board in his own interest and while he could not be said to hold a direct check or control over himself, as such officer, he would be subjected to the temptation to mold his advice to further his own interests.”

Opinion No. 1380, Opinions of the Attorney General for 1957, *supra*, concludes with this paragraph, which I believe supplies the answer to your inquiry:

“This reasoning is equally applicable to an assistant prosecuting attorney. Therefore, it is my opinion that the office of veterans service officer and assistant prosecuting attorney of the same county are incompatible and may not be held concurrently by the same person”

Therefore, it is my opinion that the offices of an assistant prosecuting attorney and legal counsel for a township within the same county are incompatible and may not be held concurrently by the same person.

Respectfully,
WILLIAM B. SAXBE
Attorney General