

OPINION NO. 69-104

Syllabus:

1. The offices of a county coroner and superintendent of a state hospital in the same county are incompatible.
2. The appointment of an assistant coroner would not alleviate the problem of incompatibility between the offices.

To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio
By: Paul W. Brown, Attorney General, August 25, 1969

You have asked my opinion as to whether the Seneca County Coroner, while holding that office, may also be appointed and serve as the Superintendent of the Tiffin State Hospital. You have also asked whether the appointment of an assistant coroner would alleviate any problems of incompatibility that might arise between the offices of coroner and superintendent of the state hospital.

The Ohio Revised Code, except in a few specific instances, has not dictated what occupations are either compatible or incompatible. The common-law rule of incompatibility is stated in State of Ohio ex rel. Attorney General v. Frank Gebert, 12 C.C. (N.S.) 274 (1909). The Court stated as follows at page 275:

"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."

Physical impossibility to perform the duties of more than one office ordinarily arises from the necessity of the officeholder to devote his full time and service to one office. Consequently, physical impossibility is a question of fact rather than a question of law.

The Ohio Revised Code indicates, however, that at times, the office of coroner would act as a check upon the office of superintendent of a state hospital.

Several state statutes show the rights and duties of the coroner as they might relate to a superintendent of a state hospital.

Section 313.19, Ohio Revised Code, provides:

"The cause of death and the manner and mode in which the death occurred, as delivered by the coroner and incorporated in the coroner's verdict and in the death certificate filed with the division of vital statistics, shall be the legally accepted manner and mode in which such death occurred, and the legally accepted cause of death, unless the court of common pleas of the county in which the death occurred, after a hearing, directs the coroner to change his decision as to such cause and manner and mode of death."

Section 3705.27, Ohio Revised Code, states in part:

"* * * If there is reason to believe that the death was caused by unlawful or suspicious means, the funeral director shall immediately notify the office of the coroner. The coroner shall make inquiry as provided by section 313.17 of the Revised Code, and make the medical certificate of death * * *."

Section 313.13, Ohio Revised Code, makes the following provision as to when an autopsy is performed:

"The coroner or deputy coroner may go to the dead body and take charge of it. If, in the opinion of the coroner, or, in his absence, in the opinion of the deputy, an autopsy is necessary, such autopsy shall be performed by the coroner, deputy coroner or pathologist. * * *

(Emphasis added)

The responsibilities of a superintendent are set forth in Section 5123.03 of the Ohio Revised Code and provide:

* * * * *

"The head of any public hospital as defined in section 5122.01 of the Revised Code and operated by the state shall be the guardian of the person of the patients hospitalized to such hospital for the purpose of retaining them therein. The head of the hospital shall have exclusive custody and control of the person of the patient during the period of time he is detained for observation or treatment, or both, whether a guardian of the person of said patient has been appointed or is appointed by any probate court. Such head shall also be guardian of the person of the patient for the purpose of release on trial visit and shall retain the right of custody during the period of such trial visit. * * *

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(Emphasis added)

It is apparent that a conflict of interest may arise if a death occurs at the Tiffin State Hospital. A person concurrently holding the offices of county coroner and superintendent of a state institution might well be called upon as coroner to investigate his own misfeasance, malfeasance or nonfeasance in connection with a death which occurred within the institution. Therefore, the two positions are incompatible.

The positions will remain incompatible if the coroner hires an assistant coroner to handle situations which make the offices of coroner and superintendent of the state hospital incompatible. Section 313.05 of the Ohio Revised Code, provides for the appointment of assistants to a coroner by stating:

"The coroner may appoint, in writing, assistant coroners who shall be licensed physicians of good standing in their profession, * * *

* * * * *

"For the performance of their duties the deputy coroner, assistant coroners,

* * * shall receive salaries fixed by the coroner * * *."

Since the appointment and salaries are left to the discretion of the coroner, the coroner directly affects the length of and compensation for employment. Furthermore, an "assistant" can be no more than his superior's alter ego. Consequently, the coroner would still have the primary responsibility and duty for decisions in questions concerning the liability and responsibility of the Superintendent of the Tiffin State Hospital when death occurs at that institution.

For these reasons, in specific answer to your inquiry, it is my opinion that:

1. The offices of a county coroner and superintendent of a state hospital in the same county are incompatible.
2. The appointment of an assistant coroner would not alleviate the problem of incompatibility between the offices.