

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

1960 Op. Att'y Gen. No. 60-1663 was overruled in part by  
1978 Op. Att'y Gen. No. 78-022.

1663

ELECTIVE POSITION OF TOWNSHIP CLERK IS INCOMPATIBLE WITH THE POSITION OF STATE DEPARTMENT OF HIGHWAY EMPLOYEE BUT IS NOT INCOMPATIBLE IF POSITION IS NOT IN THE CLASSIFIED CIVIL SERVICE — §§143.41, 507.01, R.C. OAG No. 223 for 1959.

SYLLABUS:

1. Under the restrictions of Section 143.41, Revised Code, the elective position of township clerk is incompatible with the position of state department of highways employee when the latter position is in the classified civil service.

2. The elective position of township clerk is not incompatible with the position of state department of highways employee if the latter position is not in the classified civil service and if it is physically possible for one person to perform the duties of both positions.

Columbus, Ohio, August 24, 1960

Honorable Marlowe Witt, Prosecuting Attorney  
Henry County, Napoleon, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“Are the positions of Township Clerks and classified or unclassified services in the State Highway Department compatible?”

This question breaks into two major areas of discussion. One is the compatibility of the positions of township clerk and classified employee of the state department of highways, and the other is the compatibility of the positions of township clerk and unclassified employee of the state department of highways.

As to the first question, Section 143.41, Revised Code, prohibits political activity on the part of an officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, reading:

“No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof; *nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, 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.*” (Emphasis added)

The office of township clerk is an elective office pursuant to Section 507.01, Revised Code, and there can be no question that such an office is obtained by taking part in politics within the meaning of Section 143.41, *supra*. See Opinion No. 1014, Opinions of the Attorney General for 1951, page 854, Opinion No. 4058, Opinions of the Attorney General for 1954, page 367, and Opinion No. 223, Opinions of the Attorney General for 1959.

Therefore it follows that classified employees in the service of the state department of highways (or actually in any classified civil service position) would hold a position incompatible to that of a township clerk.

The second half of the question you have submitted is not so simply and categorically dealt with as was the first. It will be noted that Section 143.41, Revised Code, applies only to officers or employees in the *classified* service and not to *unclassified* officials. There are many and various positions in the category of unclassified employees. These positions are enumerated in Section 143.08, Revised Code. It would be very difficult and certainly quite lengthy to discuss each of these positions and its compatibility with the office of township clerk. Therefore, I will deal with the problem in a general manner just as the question itself is stated in very general terms.

There does not appear to be any statute which expressly or indirectly states that Ohio Department of Highway employees in the unclassified service hold positions incompatible to that of a township clerk, nor any statute which would preclude such an employee from holding another position.

The office of township clerk is created by Section 507.01, *et seq.*, Revised Code, and his duties are further enumerated in Section 501.15, Revised Code. There is nothing in these provisions declaring a township clerk ineligible for other employment. It is necessary, therefore, to determine whether holding a job as a township clerk is incompatible with the unclassified positions of the state highway department for other than statutory reasons.

The common-law rule of incompatibility is stated in *State, ex rel. Attorney General v. Gebert*, 12 C. C. (N.S.), 274, as:

“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 township clerk is clerk of the board of township trustees and his powers and duties are generally of a secretarial nature. Any authority he might have is checked and reviewed by his superiors. Money paid out or contracts entered into are all done through the auspices of the board of township trustees, and the clerk's duties are only ministerial and pursuant to the instructions of his superiors, the board of township trustees.

In view of the statutory duties of the township clerk, it does not appear that such office would conflict with that of state department of highways employee or that either position would be a check upon the other. As to the physical ability of one person to perform the duties of both employments, this is a question of fact which cannot be answered in this opinion. I might note in this regard, however, that the position of township clerk is not a full-time employment.

Accordingly, it is my opinion and you are advised:

1. Under the restrictions of Section 143.41, Revised Code, the elective position of township clerk is incompatible with the position of state department of highways employee when the latter position is in the classified civil service.

2. The elective position of township clerk is not incompatible with the position of state department of highways employee if the latter position is not in the classified civil service and if it is physically possible for one person to perform the duties of both positions.

Respectfully,  
MARK McELROY  
Attorney General