

OPINION 65-51**Syllabus:**

The offices of jury commissioner and deputy auditor may be simultaneously held by the same person, as long as it is physically possible for the discharge of the duties involved.

To: Marshall E. Peterson, Greene County Pros. Atty., Xenia, Ohio
By: William B. Saxbe, Attorney General, April 1, 1965

I am in receipt of your request in which you ask whether the position of deputy auditor can be held simultaneously with that of jury commissioner.

Section 2313.01, Revised Code, provides that a jury commissioner is appointed by the judge of the common pleas court or a majority of the judges thereof. The jury commissioner serves at the pleasure of the judge(s), and may be removed at any time for good cause shown.

The duties of the jury commissioner include the making up of the annual and supplementary jury lists, and the selection therefrom of a sufficient number of electors to make up the required number of prospective jurors. There is no

statute prohibiting the jury commissioner from holding other employment.

Under Section 319.05, Revised Code, deputy auditors are appointed by the county auditor to aid him in the performance of his duties, which include compiling financial reports and a tabulated statement of receipts and expenditures, and compiling of the general tax list and duplicate of personal property. There is no statute prohibiting the deputy auditor from holding other employment.

Thus it follows that, if the offices involves are incompatible, it must be as a consequence of the common law rule. The most frequently quoted definition of this rule is found in *State ex rel. v. Gebert*, 12 C.C. (N.S.) 274, in which the court stated:

"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."

I can conceive of no circumstances when either position involved would be subordinate to, or in any way a check upon, the other.

Of course, the question of physical impossibility is a question of fact which can best be answered on the local level.

Accordingly, it is my opinion and you are hereby advised that the offices of jury commissioner and deputy auditor may be simultaneously held by the same person, as long as it is physically possible for the discharge of the duties involved.