

461

COMPATIBILITY—JUVENILE COURT PROBATION OFFICER AND SECRET SERVICE OFFICER FOR PROSECUTING ATTORNEY ARE COMPATIBLE — LIMITS OF PHYSICAL ABILITY.

SYLLABUS:

The office of probation officer for the juvenile court and that of secret service officer for the prosecuting attorney are compatible and there is no legal reason why one individual may not serve in the two offices at the same time, providing that it is physically possible to properly attend to the duties of both.

Columbus, Ohio, May 2, 1957

Hon. Wilford R. Miller, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

I have before me your request for my opinion, reading in part as follows:

“I would like your opinion * * * relative to the legality of employing an individual as a part-time secret service officer and part-time probation officer for the Juvenile Court, * * *.”

Inhibitions against the holding by the same person of more than one office are derived from three sources: Constitutions, statutes, and the common law. There are no inhibitive constitutional or statutory provisions that apply to the offices in question here.

There is a well settled common law rule based upon public policy, that one person may not hold two incompatible offices at the same time. Many opinions have been issued by this office concerning the compatibility of various combinations of offices, but there have been none in regard to the offices about which you inquire.

In Ohio, the case of State, *ex rel.* Attorney General, v. Gebert, 12 O. C. C., N. S., 274, is the chief authority on the subject of compatibility. At page 275, the court says:

“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.”

Other tests of incompatibility are suggested in 42 American Jurisprudence, page 935, where it is said:

“* * * the courts, with some few exceptions, hold that mere physical inability to perform the duties of both offices personally, does not constitute incompatibility. It is to be found in the character of the offices and their relation to each other, in the subordination of the one to the other, and in the nature of the duties and functions which attach to them. Incompatibility of offices exists where there is a conflict in the duties of the officers, so that the performance of the duties of the one interferes with the performance of the duties of the other.

“They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of their contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both.”

In order to determine if the offices in question are compatible we must first inquire into the duties of each.

The duties of the probation officer of the juvenile court, as set forth in Section 2151.14, Revised Code, are :

1. To make such investigations as the juvenile court directs, and keep a written record thereof ;
2. To furnish to any person placed on probation a statement of the conditions of probation, and to instruct him regarding them ;
3. To keep informed concerning the conduct and conditions of each person under his supervision and to report thereon to the judge ;
4. *To use all suitable methods to aid persons on probation and to bring about improvement in their conduct and condition ;*
5. To keep full records of his work ; keep accurate and complete accounts of money collected from persons under his supervision ; give receipts therefor, and make reports thereon to the judge ;
6. To serve process of the court within or without the county ;
7. To make arrests without warrant upon reasonable information, or upon view of violation of Sections 2151.01 to 2151.54, inclusive, of the Revised Code, and detain the person arrested pending the issuance of a warrant ;
8. And to perform such other duties, incident to his office, as the judge directs.

The duties of a secret service officer are set forth in Section 309.07, Revised Code, and they are simply to aid the prosecuting attorney in the discovery and collection of evidence to be used in the trial of criminal cases and matters of a criminal nature.

There do not appear to be any duties of the one office in question that are inconsistent with the duties of the other nor will the performance of the duties of one office result in an antagonism or a conflict of duties.

Neither is one office subordinate to the other. Under Section 2151.13, Revised Code, the probation officer of the juvenile court is appointed by the juvenile judge and serves at the pleasure of said judge. On the other hand, under Section 319.07, Revised Code, the secret service officer is appointed by the prosecuting attorney for such term as the prosecuting attorney deems advisable and subject to termination at any time by such prosecuting attorney. Also under Section 2151.13, the juvenile judge fixes the salary of the probation officer of the juvenile court, while under Section 309.07, the judge of the common pleas court fixes the salary of the secret service officers. There is nothing in these provisions to indicate that one office is subordinate to, or a check upon the other. There is no opportunity for the incumbent of one office to bestow favoritism and preference on himself as the occupant of the other. True, it may be said that the individual holding both offices would be serving two masters, but there is nothing inherently wrong in that. One person cannot faithfully and efficiently serve two masters, when the masters are working at cross purposes, but here, the masters do not have conflicting interests.

Indeed, it is probable that the skills gained while engaged in the duties of one office will be utilized in pursuing the duties of the other. This probability is a further indication that the two offices are compatible.

Although physical possibility is a question of fact and not of law, it must be considered. If the duties of one of the offices in question consume so much time or carries the officeholder to distant places, or otherwise makes it physically impossible for an individual to tend the duties of both, then it would not be in the best interests of public policy for one individual to hold both offices at the same time.

It is therefore my opinion and you are advised that the office of probation officer for the juvenile court and that of secret service officer for the prosecuting attorney are compatible and there is no legal reason why one individual may not serve in the two offices at the same time, providing that it is physically possible to properly attend to the duties of both.

Respectfully,
WILLIAM SAXBE
Attorney General