

2853.

## DEPUTY SHERIFF—EMPLOYED ON ANNUAL SALARY MAY NOT BE APPOINTED SPECIAL CONSTABLE BY JUSTICE OF PEACE.

## SYLLABUS:

*A regularly appointed and acting deputy sheriff, who is employed on an annual salary basis, may not be legally appointed a special constable by a justice of the peace to serve attachment or other papers in a civil case, while serving as deputy sheriff.*

COLUMBUS, OHIO, June 23, 1934.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your recent request for my opinion reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

“May a regularly appointed and acting deputy sheriff be appointed as special constable and serve attachment or other papers in civil cases in a court of a Justice of the Peace; and if he is so appointed, and renders the services, may the fees which he earns be retained by him, or is he required to pay them into the county treasury?”

In Opinions of the Attorney General for 1922, volume II, page 947, it was held, as disclosed by the first paragraph of the syllabus:

“The positions of deputy sheriff and county attendance officer may not be held by one and the same person at the same time.”

In the opinion at pages 950 and 951, it is stated:

“Bearing upon your first inquiry as to whether a deputy sheriff could also be employed as county attendance officer, attention is invited to section 2830 G. C., under which deputy sheriffs are appointed and which reads as follows:

‘The sheriff may appoint in writing one or more deputies. If such appointment is approved by a judge of the court of common pleas of the subdivision in which the county of the sheriff is situated, such approval at the time it is made, shall be endorsed on such writing by the judge. Thereupon such writing and indorsement shall be filed by the sheriff with the clerk of his county, who shall duly enter it upon the journal of such court. The clerk’s fees therefor shall be paid by the sheriff. Each deputy so appointed shall be a qualified elector of such county. No justice of the peace or mayor shall be appointed such deputy.’

Section 2831 G. C. provides that the sheriff shall be responsible for neglect of duty or misconduct in office for each of his deputies and the general powers and duties of the sheriff are set forth in section 2833, too long to quote here. In some instances these deputy sheriffs are employed as annual employes, with their salary paid to them monthly, while in other instances they are paid for the services they perform through-

out the year. *Where the deputy sheriff is on an annual salary, it would appear that his entire time belongs to the sheriff's office and he would be in no position to accept or perform other employment.* This condition might not obtain in those cases where a deputy sheriff was not a full-time employe, but, on the other hand, the deputy sheriff, when so employed and drawing the emoluments of such appointment, it is at all times under the direction of the sheriff, whose appointee or agent he happens to be.

'Where a deputy sheriff is paid for such services as he performs during the year, and his time is only partially taken up with his work as deputy sheriff, such an officer is eligible to appointment as probation officer, where the duties of both will not require all the time of the appointee, and there will be no conflict between the two positions. This does not apply to deputy sheriffs under a regular salary whose entire time is covered by his compensation.' (Opinion 633, p. 1439, Vol. 2, 1913.)

At the close of the opinion just referred to the then Attorney General said:

'This opinion, it must be understood, applies only to deputy sheriffs under the conditions you state and must not be construed as applying to deputy sheriffs generally, nor to deputy sheriffs under a regular salary, whose entire time is covered by his compensation.' (Italics the writer's.)

I have been informed that the regularly appointed and acting deputy sheriff under consideration in this opinion is on an annual salary, and therefore it would seem under the foregoing opinion that his entire time belongs to the sheriff's office and he could not accept other employment.

In Opinions of the Attorney General for 1933, Volume III, page 1837, it was held that a person appointed as a special constable by a justice of the peace under authority of section 3331, paragraph 4, was a "public officer," within the meaning of section 4 of Article XV of the Ohio Constitution. In support of this conclusion, the case of *Parkinson vs. Crawford*, 24 Ohio Decisions, 77, is cited. Section 3331, General Code, provides for the circumstances under which a justice of the peace may appoint a constable for a special purpose in a civil or criminal case, and I presume that the deputy sheriff involved in your communication has been or intends to be appointed special constable under authority of such section.

Certainly if, as stated in the 1922 opinion, a deputy sheriff employed on a regular annual salary cannot accept other employment, he cannot be appointed to a public office such as a special constable.

I am therefore of the opinion that a deputy sheriff, who is employed on an annual salary by the sheriff, may not be appointed a special constable by a justice of the peace, while he retains his position of deputy sheriff.

In view of the foregoing conclusion, it is unnecessary to answer the latter part of your question.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*