

**OPINION NO. 82-085****Syllabus:**

1. A deputy sheriff in the unclassified service may serve as a member of a village legislative authority.
2. A deputy sheriff in the classified service may not be a candidate for the position of village council member if such members are elected in a partisan election. He may, however, be a candidate for, and serve as a village council member if the election for such position is nonpartisan in nature. (1974 Op. Att'y Gen. No. 74-071; 1966 Op. Att'y Gen. No. 66-046, overruled in part.)

3. A city police officer may not be a candidate for the position of village council member in a partisan election. He may, however, be a candidate for, and serve as, a village council member if the election for such position is nonpartisan in nature.

To: **Thomas R. Spellerberg, Seneca County Prosecuting Attorney, Tiffin, Ohio**  
By: **William J. Brown, Attorney General, October 26, 1982**

I have before me your request for my opinion as to whether the positions of village council member and city police officer are compatible, when the city and village are in the same county, and whether the positions of village council member and deputy sheriff are compatible, again when the village is in the same county which is served by the deputy sheriff. I shall assume that there are no applicable charter or other local provisions which would affect your questions. I also shall assume that the time demands of each position are such that the respective duties may be discharged by one person. See 1979 Op. Att'y Gen. No. 79-111.

R.C. 731.12 states in part:

Each member of the legislative authority of a village shall have resided in the village one year next preceding his election, and shall be an elector of the village. No member of the legislative authority shall hold any other public office, be interested in any contract with the village, or hold employment with said village. . . . Any member who ceases to possess any of such qualifications or who removes from the village shall forfeit his office. (Emphasis added.)

From the emphasized language, it is apparent that, assuming the residency and electoral requirements are met, the crucial issue is whether either of the positions of city police officer or deputy sheriff is a public office. If the position is a public office, it may not be held by a village council member.

Turning first to an examination of the position of deputy sheriff, I point out that in 1970 Op. Att'y Gen. No. 70-035 my predecessor concluded that the position of deputy sheriff is not a public office, and thus a deputy sheriff may serve as a village council member. The fact that the opinion dealt specifically with special deputy sheriffs is of no consequence since the analysis of the opinion encompassed deputy sheriffs in general. Op. No. 70-035 was followed in Op. No. 79-111. The second paragraph of the syllabus of that opinion reads: "An individual is not precluded from holding office as a municipal council member and employment as a special deputy sheriff at the same time, assuming that the special deputy holds a fiduciary relationship to the sheriff and, thus, is in the unclassified civil service."

The qualification with regard to the unclassified civil service relates to R.C. 124.57, which provides:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, 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, or civil service townships; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, 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.

The Ohio Supreme Court has ruled that R.C. 124.57 prohibits only partisan political activity. Heidtman v. City of Shaker Heights, 163 Ohio St. 109, 126 N.E.2d 138

(1955). In reliance on this opinion, I have concluded that classified employees may be candidates in nonpartisan elections. 1978 Op. Att'y Gen. No. 78-022; 1974 Op. Att'y Gen. No. 74-034. Candidates for council in villages with a population of less than two thousand persons are nominated by petition, rather than in a primary election, unless a majority of electors files a petition with the board of elections requesting a primary. R.C. 3513.01; R.C. 3513.251. The nominated candidates then seek election on a nonpartisan ballot. R.C. 3505.04. Pursuant to the reasoning of Op. No. 74-034 and Op. No. 78-022, R.C. 124.57 would not prohibit a deputy sheriff from being a candidate in a nonpartisan election for village council,<sup>1</sup> and Op. No. 70-035 and Op. No. 79-111 indicate the positions are otherwise compatible.

If the elections for village council are partisan, the prohibition of R.C. 124.57 necessitates an examination of whether the position of deputy sheriff is in the classified or unclassified service. Op. No. 79-111 states at 2-368 to -369:

The Ohio Supreme Court has held that deputy sheriffs are members of the unclassified civil service only when they are assigned to and perform such duties that they hold a fiduciary or administrative relationship to the sheriff. In re Termination of Employment 40 Ohio St. 2d 107 (1974). As such, unless the individual here holds a fiduciary or administrative relationship to the sheriff, he or she is in the classified civil service and is barred by R.C. 124.57 from holding a partisan municipal council position.

A deputy sheriff who is assigned ordinary and usual police functions does not perform the duties required of a fiduciary. A fiduciary relationship is "one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence. . . ." In re Termination, supra, at 115. Thus, although there may be cases where a deputy is in a fiduciary relationship with the sheriff—such as where he or she has charge of bond deposits or acts as a receiver of property—the "question is one of fact, not of title, and can only be answered by examination of the duties assigned to and performed by the deputy." Id. at 115.

Thus, if a deputy sheriff is in the classified service, he is prohibited by R.C. 124.57 from being a candidate in a partisan election for village council. If a deputy sheriff is in the unclassified service, he may be a candidate for, and hold, the position of village council member.

I turn now to an analysis of the position of city police officer. City policemen are in the classified service. See R.C. 124.11; R.C. 124.43; R.C. 737.11. Accordingly, a city policeman may not be a candidate for village council member in a partisan election, as explained above. However, assuming that the election for village council is nonpartisan, he may be a candidate for council, and, it is, therefore, necessary for me to examine further the specific duties of city police officer and village council member. Two positions are incompatible if one position is subordinate to, or a check upon the other, or if one person serving in both positions would be subject to a conflict of interest. State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274 (Cir. Ct. Franklin County 1909); Op. No. 79-111.

The general duties of a municipal police force are to "preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority of the municipal corporation, all criminal laws of the state and the United States, and all court orders issued and consent agreements approved pursuant to sections 2919.26 and 3113.31 of the Revised Code," as well as to perform those other duties prescribed by ordinance. R.C. 737.11. Police officers are responsible to the chief of police, R.C. 737.06; R.C. 737.12, who is answerable to the director of public safety, R.C. 737.02. A village council exercises the village's

<sup>1</sup>To the extent that 1974 Op. Att'y Gen. No. 74-071 and 1966 Op. Att'y Gen. No. 66-046 indicate that classified employees may not run in nonpartisan village elections, they are overruled.

legislative power, and its members are directly responsible to the people who elect them, R.C. 731.09. It does not appear that the duties or responsibilities of a city police officer and village council member are such that one position is a check upon, or subordinate to, the other.

There is, however, a potential conflict of interest between the two positions. R.C. 737.04 allows the legislative authority of a municipal corporation to enter into a contract<sup>2</sup> with another municipal corporation for the provision of police protection. If the village in question were to enter into a contract with the city, in which the village council member served as a police officer, for police services, the person could have a potential interest in the contract upon which he was voting. However, a similar conflict was said to be "remote and speculative" and not a bar to compatibility in Op. No. 79-111, since the possibility of such a contract was only speculative, the law enforcement officer would have no decision-making authority, and because the contract would constitute only a small fraction of the legislative authority's affairs. Accordingly, I find such a remote conflict does not prevent a city police officer from serving as village council member. Of course, as pointed out in Op. No. 79-111, the council member should abstain from discussing and voting upon any matter relating to the city police department.

In conclusion, it is my opinion, and you are advised, that:

1. A deputy sheriff in the unclassified service may serve as a member of a village legislative authority.
2. A deputy sheriff in the classified service may not be a candidate for the position of village council member if such members are elected in a partisan election. He may, however, be a candidate for, and serve as a village council member, if the election for such position is nonpartisan in nature. (1974 Op. Att'y Gen. No. 74-071; 1966 Op. Att'y Gen. No. 66-046, overruled in part.)
3. A city police officer may not be a candidate for the position of village council member in a partisan election. He may, however, be a candidate for, and serve as, a village council member if the election for such position is nonpartisan in nature.

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<sup>2</sup>Police protection may also be provided to another municipal corporation, other political subdivisions, or a governmental entity of an adjoining state without a contract, by resolution of the municipality's legislative authority, and upon the authorization of the appropriate police officer or employee. R.C. 737.041. I assume that the police officer in question does not have the authority to pass upon such an arrangement with the village in question.