

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

1973 Op. Att'y Gen. No. 73-082 was questioned by  
1999 Op. Att'y Gen. No. 99-027.

## OPINION NO. 73-082

**Syllabus:**

Article IV, Section 6 (F), Ohio Constitution, prohibits an assistant county prosecuting attorney from also serving as a part-time municipal court judge. Opinion No. 73-081, Opinions of the Attorney General for 1973, approved and followed; Opinion No. 73-061, Opinions of the Attorney General for 1972, rescinded; Opinion No. 71-005, Opinions of the Attorney General for 1971, disapproved.)

---

**To: Joseph R. Grunda, Lorain County Pros. Atty., Elyria, Ohio**  
**By: William J. Brown, Attorney General, August 23, 1973**

I have before me your request for my opinion which reads as follows

This office would like to request an Opinion as to whether or not the following positions are considered compatible; "the office of Assistant Lorain County Prosecutor and acting Judge of Elyria Municipal Court".

On occasion, Judge Horn, who is full time Judge of the Elyria Municipal Court will request a local Attorney to replace him as Judge for days where he cannot be present, such as sick days and vacation days. We have a member of our staff who has been requested and is desirous of acting as the Judge during such absent periods of Judge Horn. This office has reviewed past Attorney General's Opinions and can find no opinion or case in point. We feel that as long as the Assistant County Prosecutor refrains from handling any cases which would ultimately be completed by the County Prosecutor's Office, such as handovers to the Grand Jury, he would be allowed to handle routine municipal misdemeanors. The County Prosecutor's office in no way involves itself with misdemeanor complaints

or municipal civil matters, only felony cases which are processed by the lower Court and bound over to the Grand Jury and ultimately completed by this office.

R.C. 1901.06 establishes the requirements that a municipal court judge must meet. This Section reads in pertinent part as follows:

A municipal judge during his term of office shall be a qualified elector and a resident of the territory of the court to which he is elected or appointed, and shall have been admitted to the practice of law in the state and shall have been, for a total of at least six years preceding his appointment or commencement of his term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both. \* \* \*.

R.C. 1901.10 is the statutory provision for the appointment of a substitute judge in the municipal court where there is only one judge (as in the present case) and he becomes temporarily absent or incapacitated. This Section reads in pertinent part as follows:

When a judge of a municipal court having only one judge is temporarily absent or incapacitated, the judge may appoint a substitute who has the qualifications required by section 1901.06 of the Revised Code and if such judge is unable to make the appointment the chief executive shall appoint a substitute. Such appointee shall serve during the absence or incapacity of the incumbent, shall have the jurisdiction and powers conferred upon the judge of the municipal court, and shall be styled "acting judge." He shall sign all process and records during the time he is serving, and shall perform all acts pertaining to the office, except that of removal and appointment of officers of the court. \* \* \*.

(Emphasis added.)

It can be said, therefore, that R.C. 1901.10 incorporates the statutory requirements of R.C. 1901.06 with regard to a substitute judge, requiring that a substitute judge also be a county resident, elector, and engaged in the practice of law for at least six years preceding his appointment to this judicial office. R.C. 4705.01 does contain a provision prohibiting judges from engaging in the practice of law. This Section reads, in part, as follows:

No judge of any court of record in this state shall engage in the practice of law during his term of office, either by appearing in court, by acting as

advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided in Section 1901.11 of the Revised Code.

However, R.C. 1901.11 makes a specific exception for all part-time municipal court judges. This Section provides:

Judges designated as part-time judges by Section 1901.08 of the Revised Code shall receive as compensation not less than six thousand dollars per annum, as the legislative authority prescribes, and such judges shall be disqualified from the practice of law only as to matters pending or originating in the courts in which they serve during their terms of office.

(Emphasis added.)

Therefore, part-time municipal court judges are not prohibited from practicing law in all circumstances.

However, my recent decision in Opinion No. 73-081, Opinions of the Attorney General for 1973, compels me to advise that a part-time municipal court judge may not hold another public office, including that of assistant county prosecuting attorney. The syllabus of that Opinion states as follows:

The prohibition expressed in Article IV, Section 6 (B) of the Ohio Constitution relating to the holding of an office of profit or trust, applies to all judges. (Opinion No. 69-131, Opinions of the Attorney General for 1969, approved and followed.)

For the purposes of your inquiry, the office of assistant county prosecuting attorney must be considered a public office, because the assistant is authorized to stand in place of the prosecuting attorney. Opinion No. 71-037, Opinions of the Attorney General for 1971, states that "the rules of compatibility respecting the prosecuting attorney have been held to apply with equal force to assistant prosecuting attorneys." Furthermore, I can see no reason why the holding of Opinion No. 73-081, supra, would not apply to part-time municipal court judges.

Consequently, I must reconsider my original answer to your question, rendered in Opinion No. 73-061, Opinions of the Attorney General for 1973, in which I advised that the two offices in question were compatible. That Opinion did not consider the effect of Article IV, Section 6 (B), Ohio Constitution. Consequently, I must rescind it and advise that the offices in question may not be held simultaneously by the same person.

This conclusion also requires a reconsideration of Opinion No. 71-005, Opinions of the Attorney General for 1971, in

which my predecessor advised that the offices of judge of a county court and assistant city solicitor of a municipality in an adjoining county are compatible. Since that Opinion, also, did not take into account Article IV, Section 6 (B), I must disapprove it, as the constitutional prohibition appears to cover the fact situation of that Opinion.

In specific answer to your question, it is my opinion and you are so advised, that Article IV, Section 6 (B), Ohio Constitution, prohibits an assistant county prosecuting attorney from also serving as a part-time municipal court judge. (Opinion No. 73-081, Opinions of the Attorney General for 1973, approved and followed; Opinion No. 73-061, Opinions of the Attorney General for 1973, rescinded; Opinion No. 71-005, Opinions of the Attorney General for 1971, disapproved.)