

2065.

CHIEF OF POLICE—PAINESVILLE—MAY BE APPOINTED APPRAISER
BY MUNICIPAL COURT BAILIFF.*SYLLABUS:*

The chief of police of the city of Painesville may lawfully serve as an appraiser selected by the bailiff of the Municipal Court of that city and be paid fees for such services.

COLUMBUS, OHIO, July 8, 1930.

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

GENTLEMEN:—I am in receipt of your letter of recent date, which is as follows:

“Section 1579-1067 G. C., (Sec. 37 of the Painesville Municipal Court Act, 112 O. L., page 318), provides in part that every police officer of the city of Painesville shall be, ex officio, a deputy bailiff of the Municipal Court of said city.

During a recent examination of the affairs of this court it was noted that the chief of police had been appointed at various times by the bailiff of the court as a member of a board of appraisers of property levied against by said bailiff, and that a fee was collected and paid to such chief of police for these services.

Question 1. May the chief of police of the city of Painesville serve as a member of a board of appraisers appointed by the bailiff, and be paid fees for such services?”

The bailiff of the Municipal Court of Painesville, Ohio, by virtue of the Municipal Court Act, Sections 1579-1031 to 1579-1081, inclusive, of the General Code, is authorized to select appraisers in matters in which an appraisal is required by law.

Section 1579-1067, General Code, which is pertinent to your inquiry, provides in part as follows:

“ * * * Every police officer of the city of Painesville shall be ex-officio deputy bailiff of the Municipal Court and shall perform from time to time such duties in respect to cases within the jurisdiction of said court as may be required of them by said court or the clerk or bailiff thereof.”

This section makes every police officer an ex-officio deputy bailiff and therefore every police officer has authority to perform the duties which are enjoined by law upon the bailiff of the Municipal Court. Since the bailiff has authority to select appraisers, and every police officer is an ex-officio deputy bailiff, the question arises whether or not a police officer is qualified for selection as an appraiser.

There is a general rule of law that officers who have appointing power are disqualified for appointment to the offices to which they may appoint. This is also true even though the officer is not called upon to exercise his appointing power in his appointment to the office. However, in the case before me, while a police officer is ex-officio deputy bailiff, he may only perform the duties of bailiff when required to do so by the court, clerk, or bailiff, and therefore the police officer may only exercise the authority of the bailiff to select appraisers when required to do so by the court, clerk or bailiff. The fact that a police officer, which includes a chief of police, is ex-officio deputy bailiff, does not disqualify such officer for selection as an appraiser by the bailiff of the court.

There appears to me to be a more serious question as to the legality of a chief of police being selected as an appraiser, and that is whether a chief of police can consistently perform the duties of his office and engage in other employment. A person may not hold two offices which are incompatible. 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. *State ex rel. vs. Gebbard*, 12 O. C. C. (n. s.) 274.

This rule is applicable when one position is an office and another is employment.

The duties of a chief of police are defined in Sections 4372, 4378 and 4379, General Code.

Section 4372 provides that the chief of police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employes in the department, under such general rules and regulations as the director of public safety prescribes.

Section 4378 provides that the police force shall preserve the peace, protect persons and property and obey and enforce all ordinances of council and all criminal laws of the state and of the United States.

Section 4379 provides that the chief of police shall have exclusive right to suspend any of the deputies, officers and employes in his respective department and under his management and control for causes set forth in this section.

Former attorneys general have expressed the view that the chief of police in order fully to perform his duties must hold himself in readiness to respond to call at any time during day or night and, therefore, cannot accept other duties. This view as to the duties of the chief of police has been expressed by at least two former attorneys general. In an opinion found in Opinions of the Attorney General for 1913, Volume I, page 421, the then Attorney General said:

"The duties of a chief of police of a city are such as to require all his time, or if not, require that he hold himself in readiness to respond to call of duty at any time during night or day, which, of necessity, precludes him from accepting appointment to the position of deputy sheriff or devoting any time thereto which even possibly might interfere with the lawful performance of his duties."

Also in the Opinions of the Attorney General for 1922, at page 108, the Attorney General said:

"Analyzing the duties of the office, cited and imposed by law upon the chief of police, it would seem obvious that the nature of such office and employment requires that the chief of police shall devote full time to the performance of said duties and should hold himself in constant readiness to enforce the ordinances of council and preserve the peace of the municipality."

In this latter opinion, the Attorney General held that the duties of the office of chief of police are incompatible with those of a probation officer.

It will be noted that in the opinions cited herein the attorneys general had under consideration the duties of officers such as deputy sheriff and probation officer which require continuous service and it is apparent that such duties would seriously interfere with the full performance of the duties of a chief of police. However, in the case of an appraiser, the duties are only temporary and require but a limited time to perform and, therefore, it can hardly be said that the duties of a chief of police and an appraiser are incompatible on the ground that it is physically impossible for one person to discharge the duties of both.

I am, therefore, of the opinion that the chief of police of the city of Painesville may lawfully serve as an appraiser selected by the bailiff of the Municipal Court of that city and be paid fees for such services.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2066.

ROBBERY INSURANCE—COUNCIL ON NON-CHARTER CITY MAY NOT PAY PREMIUMS ON SUCH INSURANCE COVERING FUNDS IN HANDS OF TREASURER AND CLERK TO DIRECTOR OF PUBLIC SERVICE—EXCEPTION.

SYLLABUS:

1. *Where by law or ordinance public officials or employes are required to give bond which fully protects the public against losses occasioned by theft, robbery or burglary, the paying, from public funds, of premiums for burglary or robbery insurance to cover such losses is wholly unauthorized, in the absence of specific statutory authority therefor.*

2. *Where by ordinance a city treasurer is required to give a bond for the faithful performance of duty and obligating himself to pay over all moneys received in his official capacity according to law, the payment, from public funds, of the premium on robbery or burglary insurance to cover losses which may be sustained by said city treasurer on account of robbery and burglary, is wholly unauthorized.*

3. *Where the public is secured by means of a bond of either the director of public service or his clerk from any losses of public funds in the hands of such clerk that may be sustained by reason of robbery or burglary, there is no authority to effectuate burglary or robbery insurance for the protection of such funds and pay for the same from the public treasury.*

4. *Where a public officer or employe handles public funds and is not required by law or ordinance to give bond for the faithful performance of duty or to faithfully account for such funds, burglary or robbery insurance may lawfully be procured to cover possible losses of such funds, while in the hands of such officer or employe, occasioned by robbery or burglary, and the premium on such insurance may lawfully be paid from the public treasury.*

COLUMBUS, OHIO, July 8, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your inquiry which reads as follows:

“Question 1. May the council of a city not having adopted a charter, legally provide for the payment out of city funds, of the premium for robbery insurance covering funds in the possession of the city treasurer?”

“Question 2. May a city legally expend its funds for such purpose, covering funds collected by a clerk to the Director of Public Service whose duty it is to issue permits, etc., and collect moneys therefor?”

The statutes of Ohio make no specific provisions with reference to either the terms of or the amount of a bond to be given by a city treasurer or a director of public service in non-charter cities; nor do they specifically pro that those officers must give a bond.