

Specifically answering your question, therefore, I am of the opinion that a person serving as member of a municipal civil service commission at the time of his election as councilman at large, may assume his seat in council if he resigns from the civil service commission before his term as councilman begins.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

1330.

OFFICES INCOMPATIBLE—DEPUTY COUNTY AUDITOR AND MEMBER  
 OF BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS.

*SYLLABUS:*

*The offices of deputy county auditor and member of the board of deputy state supervisors of elections are incompatible.*

COLUMBUS, OHIO, December 24, 1929.

HON. JAY R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This acknowledges receipt of your request for my opinion which reads:

“At the request of Walter N. Dean one of the State Examiners who is now examining the books and records of the office of Defiance County, I wish to submit for your opinion the following proposition.

Mr. X. is a member of the County Board of Elections. He also holds the position of Deputy County Auditor.

QUESTION: Are these two offices incompatible?”

Section 2563, General Code, providing for the appointment of deputy county auditors, reads:

“The county auditor may appoint one or more deputies to aid him in the performance of his duties. The auditor and his sureties shall be liable for the acts and conduct of such deputy or deputies. When a county auditor appoints a deputy, he shall make a record thereof in his office and file a certificate thereof with the county treasurer, who shall record and preserve it. When a county auditor removes a deputy, he shall record such removal in his office and file a certificate thereof with the county treasurer, who shall record and preserve it.”

Section 9, General Code, reads, in part:

“A deputy, when duly qualified, may perform all and singular the duties of his principal.”

In 1920 (Opinions of the Attorney General for 1920, Vol. II, page 1280), the then Attorney General held:

“The office of county auditor is incompatible with any and all offices or employments which receive or pay out funds of the county, or where such

offices or employments make a certificate to the county auditor for the payment of claims, and the county auditor cannot fill a second position when the duties of said second position or office require the incumbent to account for, receive or expend moneys or funds of the county, or to certify claims to the county auditor for payment."

I concur in this view and am of the opinion that the same rule should apply in establishing the incompatibility between the office of deputy county auditor and the office of member of the board of deputy state supervisors of elections.

Under Section 4970-1, General Code, the board of deputy state supervisors of elections receives the fees paid by all candidates for office who enter a primary. These fees shall then be paid "by the officer receiving same into the treasury of his county to the credit of the county fund." It would thus appear that if the deputy auditor of a county is also a member of the board of elections in the same county, he might receive these fees as a member of the board of elections, and, in the process of paying the same into the treasury as deputy auditor, certify to the correctness of such transaction.

It is true that in the smaller counties these fees might amount to a very small total, but any rule laid down would have to fit the larger counties as well as the smaller ones, because Section 4970-1, supra, is a law of a general nature, applying to all counties, regardless of size or whether there is a registration city in the county or not.

Attention will now be given to the question as to whether the auditor accounts for or expends moneys where the claims have been certified to the county by the board of elections. Section 4822, General Code, provides that each deputy state supervisor of elections shall receive Three Dollars (\$3.00) for each election precinct in his county, such compensation to be paid quarterly from the general revenue fund of the county upon vouchers of the board, and that upon presentation of such vouchers the county auditor shall issue his warrant.

For a discussion of other sections which would make the offices incompatible see the 1920 opinion hereinbefore referred to.

Sections 2568, 2569, and 2570, General Code, provide that the county auditor shall keep an accurate account of all moneys received and paid by the county treasurer, and issue warrants on the county treasurer for all moneys payable from such treasury except money due the state, upon proper voucher or vouchers therefor.

Under Section 2563, supra, deputies aid the county auditor in performance of his duties, and it is a matter of common knowledge that they frequently have authority to issue warrants and sign the auditor's name thereto.

The common law rule of incompatibility as stated in the case of *State ex rel. vs Gebert*, 12 C. C. (n. s.) 274, is as follows:

"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."

It will be readily seen from the above that no one person under any condition can hold two positions when one is a check upon the other unless specifically authorized by statute.

Specifically answering your question, therefore, I am of the opinion that the offices of deputy county auditor and member of the board of deputy state supervisors of elections are incompatible.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*