

The electors of the district approved the bond issue in view of the resolution adopted. The resolution of the board of education was a notice to the electors of the district as to the contemplated action of the board of education. It is very apparent that the electors of the district might decide in favor of a bond issue for the erection of one building to cost two hundred thousand dollars, and would be opposed to the purchase of two sites and the erection of two buildings to cost two hundred thousand dollars. It is also easy to conceive that the electors of the district might favor the erection of a new school buildings at the cost estimated in the resolution, and on the other hand they might be opposed to the expenditure of any sum upon the repair of an old structure. Therefore, it will be seen that the protection of the electors of the district who authorize a bond issue requires that expenditures should not be made of funds acquired by a special bond issue for purposes not specifically set forth in the resolution.

In view of the language of the resolution as heretofore disclosed, it being clear that only one building seems to have been contemplated, it seems inconsistent to say that more than one site was intended. While it will be conceded that the word "land" might be construed to cover more than one site, in view of the other language of the resolution it is not believed such a construction is justified. Nowhere in the resolution is there any reference to making an addition to an existing school building, and it must be concluded that such a proposition was not submitted to the electors.

In specific answer to your inquiries you are advised that it is the opinion of the Attorney-General that each of said queries must be answered in the negative.

The enclosures submitted are being returned herewith.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1999.

OFFICES COMPATIBLE—CRIMINAL COURT BAILIFF—COURT CONSTABLE—IN COUNTIES HAVING LESS THAN FOUR COMMON PLEAS JUDGES.

The office and duties of a criminal court bailiff and those of a court constable are compatible, and the same person may be appointed to discharge the duties of both offices, by the judge or judges of the common pleas court in counties having less than four judges, and may receive the salary for both positions, provided, however, that he is not paid twice for the same service.

COLUMBUS, OHIO, April 13, 1921.

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

GENTLEMEN:—Receipt is acknowledged of your letter of recent date reading as follows:

"We respectfully request your written opinion upon the following matter:

Question: Can the same person be appointed by the judge or judges of the common pleas court, in a county having less than four judges, as court constable and as criminal bailiff and receive the salary for both positions?"

The question submitted by the above inquiry would seem to be governed by the rule recognized in cases when offices or duties are said to be compatible or incompatible.

The rule of incompatibility of office is laid down in the opinion of Dustin, J., in case of *State vs. Gebert*, 12 C. C. (N. S.) 274, 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.”

As to the physical qualification of such officers mentioned, it has been held by former opinions of this department and the conclusion is well supported by other authority, that it is for those who appoint these officers and fix their compensation, to determine whether or not it is physically impossible for the same person to fill both positions; the law does not prevent it.

The following provisions of the statutes apply to the appointment, compensation, and duties of court constables and criminal court bailiffs:

“Sec. 1692. When, in the opinion of the court, the business thereof so requires, each court of common pleas, court of appeals, superior court, insolvency court, in each county of the state, and, in counties having at the last or any future federal census more than seventy thousand inhabitants, the probate court may appoint one or more constables to preserve order, attend the assignment of cases in counties where more than two common pleas judges regularly hold court at the same time, and discharge such other duties as the court requires. When so directed by the court, each constable shall have the same powers as sheriffs to call and impanel jurors, except in capital cases.”

“Sec. 1693. Each constable shall receive the compensation fixed by the judge or judges of the court making the appointment. In counties where four or more judges regularly hold court, said compensation shall not exceed eighteen hundred and twenty dollars each year, in counties where two judges and not more than three judges hold court at the same time, not to exceed twelve hundred and fifty dollars each year, and in counties where only one judge holds court, such amount, not to exceed one thousand dollars each year, as may be fixed by the court, and shall be paid monthly from the county treasury on the order of the court. Such court constable or constables when placed by the court in charge of the assignment of cases, may be allowed further compensation not to exceed one thousand five hundred dollars per year, as the court by its order entered on the journal determines. In counties where only one judge holds court the constable provided for herein, when not attending the common pleas court, shall upon the order of the judge of such common pleas court, and without additional compensation, attend the probate court and the court of appeals of said county.”

“Sec. 1541. The judge of the court of common pleas of a county, or the judges of such a court in a county in joint session, if they deem it advisable, may appoint either or all of the following: * * * Second, a criminal bailiff, who shall be a deputy sheriff and hold his position during the pleasure of the judge or judges of such court. He shall receive compensation to be fixed by such judge or judges at the time of his appointment, not to exceed the amount permitted by law to be allowed court constables in the same court,” etc.

"Sec. 1543. The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the common pleas and probate courts of such county. Under the direction of the sheriff, he shall be present during trials of criminal cases in such courts and during such trials perform all the duties as are performed by the sheriff. The criminal bailiff shall conduct prisoners to and from the jail of such counties, and for that purpose, shall have access to the jail and to the court room, whenever ordered by such courts, and have care and charge of such prisoners when so doing. Under the direction of the sheriff, the criminal bailiff shall convey to the penitentiary all persons sentenced thereto. He shall receive and collect from the state treasurer all costs in such criminal cases in the same manner as the sheriff by law is required to do, and pay the amount so collected to the sheriff of such county."

It would appear by an examination of these statutes, that the duties of criminal bailiff and court constable were very similar ones, and in no way would the one seem to be a check upon or subordinate to the other.

It is stated in section 1541 G. C. supra, that the criminal bailiff shall be a deputy sheriff, and in this connection, attention is called to a previous opinion of this department, and cited in Vol. 1, 1911-1912, page 322 Opinions, Attorney-General, wherein the offices of court constable and those of deputy sheriff are held to be compatible offices, and that such a union of official services are not prohibited by statute.

In the case of *Wolf vs. Shaffer*, 18 O. D. 303, it is held

"The same person may, at the same time hold the positions of deputy sheriff and court constable, neither of which is a public office as that term is known to the law, and such incumbent may lawfully receive the emoluments peculiar to each provided he is not paid twice for the same service."

That is, the person discharging the duties of the office in question cannot be paid for performing certain duties as court constable, and then be paid for the same work as deputy sheriff; the service performed in each capacity must be separate and distinct from the other.

In view, therefore, of the considerations presented, it would be the opinion of this department that the office and duties of a court criminal bailiff and those of a court constable are compatible, and the same person may be appointed by the judge or judges of the common pleas court, in a county having less than four judges, as court constable, and as criminal bailiff and receive the salary for both positions, provided he is not paid twice for the same service, and that there is no overlapping of the salaries incident to both offices.

Respectfully,
JOHN G. PRICE,
Attorney-General.