

**OPINION NO. 69-115****Syllabus:**

The office of county recorder and the position of county veterans' service officer are incompatible because of their respective statutory requirements, and they may not be held concurrently by the same person.

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**To: Edward D. Mosser, Harrison County Pros. Atty., Cadiz, Ohio**  
**By: Paul W. Brown, Attorney General, September 12, 1969**

I have before me your request for my opinion as to whether the office of county recorder is compatible with the office of county veterans' service officer, employed on a part-time basis and appointed under the authority of Section 5901.07, Revised Code.

Chapter 317 of the Revised Code describes the office and duties of the county recorder. Nothing contained therein specifically makes the office of county recorder incompatible with any other office.

Section 5901.07, Revised Code, sets out the duties of the county veterans' service officer. It provides in pertinent part as follows:

"The soldiers' relief commission may employ a 'county veterans' service officer' who must be an honorably discharged veteran of the United States armed forces. The duties of such officer shall be to advise and assist persons in the armed forces of the United States, veterans of any war, and the wives, widows, children, parents, and dependants of such veterans in presenting claims or obtaining rights or benefits under any law of the United States or of this state.

"The commission may employ such service officer on a part or full time basis. No county commissioner or member of the commission shall be employed as service officer \* \* \*. The compensation of the service officer \* \* \* shall be paid out of funds appropriated to the commission, as provided in section 5901.11 of the Revised Code."

Public offices are subject to two types of incompatibility, statutory and common law. Statutory incompatibility arises when some provision of law establishes criteria for one of the jobs that cannot be met by the person if he holds the other job at the same time. The common law rule on incompatibility in Ohio is stated in State, ex rel. Attorney General, v. Gebert, 12 C.C. (N.S.) 274, at page 275, 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."

Under the common law definition above, there is no incompatibility between the offices of county recorder and county veterans' service officer. Section 5901.07, supra, assigns to the veterans' service officer the duties of advising and assisting servicemen, veterans, and their dependents in presenting claims or obtaining rights or benefits under law. The duties of the county recorder, as set forth in Chapter 317 of the Revised Code, are generally to make a public record of various types of documents. An examination of the statutes pertaining to the county recorder and to the county veterans' service officer does not reveal any provisions which would constitute one superior or subordinate to the other, or which would provide either any form of check upon the other. As to physical possibility, the county recorder is not required to devote his full time to the duties of the office. Obviously, from the provisions of Section 5901.07, supra, the office of veterans' service officer does not necessarily require full time service, and in fact your question pertains to a service officer employed on a part-time basis. Thus, there is no common law incompatibility between

the two offices.

There is, however, a clear statutory incompatibility. Section 143.08, Revised Code, provides in part as follows:

"The civil service of the state and the several counties \* \* \* shall be divided into the unclassified service and the classified service.

"\* \* \* \* \*"

"(B) The classified service shall comprise all persons in the employ of the state and the several counties \* \* \* not specifically included in the unclassified service \* \* \*."

Since the position of county veterans' service officer is not listed in the unclassified civil service under Section 143.08, supra, it must be concluded that it is a classified service position. This conclusion was also reached in Opinion No. 4130, Opinions of the Attorney General for 1948, and Opinion No. 1116, Opinions of the Attorney General for 1952.

Section 143.41, Revised Code, reads in part as follows:

"No officer or employee in the classified service of the state or the several counties \* \* \* 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 officer or employee in the classified service of the state or the several counties \* \* \* 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."

Section 317.01, Revised Code, provides in pertinent part as follows:

"There shall be elected quadrennially in each county a county recorder \* \* \*."

Clearly one who holds an elective public office such as that of county recorder would be "tak/ing/ part in politics other than to vote as he pleases and to express freely his political opinions", and such a person could not also hold an office or position under the classified service without being in violation of Section 143.41, supra.

It is, therefore, my opinion and you are hereby advised that the office of county recorder and the position of county veterans' service officer are incompatible because of their respective statutory requirements, and they may not be held concurrently by the same person.