

say that an implied repeal of section 5372-1 has resulted from the enactment of section 5404-1, but rather that the special case provided for in section 5404-1 is taken, so far as its necessities require, out of the general rule embodied in section 5372-1.

These principles require the following answers to the commission's specific questions:

(1) If an incorporated company has in its possession or under its control as agent property belonging to another corporation, such property should be listed as of the first day of January rather than as of the day preceding the second Monday of April. Under section 5370 the listing should be made not by the agent corporation but by the owner corporation.

(2) If an incorporated company has property in its possession or under its control as agent belonging to an individual, such property should be listed by the agent company as of the day preceding the second Monday of April, and not as of the first day of January.

(3). If an individual has in his possession or under his control as agent property belonging to an incorporated company, such property should be listed as of the first day of January rather than as of the day preceding the second Monday of April. Return should be made by the principal officer of the corporation rather than by the agent; with possible exceptions in the cases of agents having control of investments and of receivers, which are not considered.

- Respectfully,
JOHN G. PRICE,
Attorney-General.

1703.

OFFICES COMPATIBLE—TOWNSHIP TRUSTEE—DEPUTY REAL ESTATE ASSESSOR.

The office of township trustee and the position of deputy real estate assessor are compatible.

COLUMBUS, OHIO, December 11, 1920.

HON. WATSON H. GREGG, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—In your communication of recent date you make the following request:

“Please let me have your opinion as to whether or not a township trustee can legally act as an appraiser of real estate. The county auditor desires to appoint a trustee to appraise real estate in his township, beginning about the middle of January, 1921, and I am not sure whether the two positions are compatible.”

Under the provisions of section 5548 G. C., 108 O. L., Part I, page 558, the county auditor is the real estate assessor for the purpose of taxation of all the real estate situated in his county, performing such duties under the supervision of the state tax commission. The county auditor in connection with his duties as real estate assessor is empowered to appoint and employ such experts, deputies and employes as he deems necessary to perform such duties.

It is assumed that you have in mind a deputy real estate assessor when you use the term "appraiser of real estate" in your communication. It will be observed that under the provisions of said section 5548 G. C. a deputy assessor or employe does not fix the value of the land for taxation, but rather obtains such information as the auditor requests or directs relative to the description and character of the real estate, the auditor fixing the taxation value and assuming the responsibility. In other words, one employed as an assistant to the county auditor in connection with the assessment of real estate for taxation purposes is an "employe" and not an "officer" as the terms are understood in legal terminology.

In the case of *State ex rel. vs. Gebert*, reported in 12 O. C. C. (n. s.) 274, the following doctrine was proclaimed by the court, which is frequently cited as the rule in Ohio as a guide in determining whether two positions are compatible or 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."

In considering the laws governing the duties of the two positions which you mention, and making application of the rule above quoted, it does not appear that either position is a check upon the other. It is also apparent that it is not a physical impossibility for one person to perform the duties of both. Neither has there been found any special statute prohibiting either of the officials you mention from performing the duties of the other.

It has been held by this department that the position of township trustee and member of township board of education were compatible. Annual Report of Attorney-General, 1909-10, p. 677. A similar conclusion was reached relative to a township trustee and a member of the board of review. Annual Report of Attorney-General 1911-12, p. 171. In an opinion reported in Annual Report of Attorney-General, 1913, p. 1087, it was held that the offices of township trustee and superintendent of roads were compatible; and it was further held, in an opinion of my predecessor found in Opinions of the Attorney-General, 1916, p. 26, that a township trustee could properly act as inspector of road improvement.

In view of the foregoing it is the conclusion of this department that a township trustee may legally be employed or appointed by the county auditor as a deputy real estate assessor and act in both capacities.

Very respectfully,

JOHN G. PRICE,
Attorney-General.