

OPINION NO. 85-042**Syllabus:**

1. The positions of dog warden and village police chief are compatible, provided it is physically possible for one person to discharge the duties of both positions.
2. A person who serves as a county dog warden on a full time basis and who is on call twenty-four hours a day, may not serve as a part time village police chief.

To: Wilfrid G. Dues, Preble County Prosecuting Attorney, Eaton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 8, 1985

I have before me your request for my opinion on the question whether the positions of county dog warden and village police chief are compatible.

Compatibility questions arise when one individual holds or wishes to hold two public positions. 1979 Op. Att'y Gen. No. 79-III sets forth the seven issues which must be analyzed in determining whether two public positions are compatible. The questions are as follows:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

Questions number six and seven are of local concern, and I assume for purposes of this opinion that there are no departmental regulations or other local provisions which limit the holding of outside employment by a village police chief or a dog warden. With regard to issue two, there are no constitutional or statutory

provisions expressly prohibiting one person from simultaneously holding the two positions in question.

Question number one of the compatibility analysis concerns R.C. 124.57, which prohibits employees in the classified service of the state, the several counties, cities, city school districts, and civil service townships from taking part in political activity other than to vote or express their political opinions. An employee in the classified service is prohibited by R.C. 124.57 from being a candidate for public office in a partisan election. See 1983 Op. Att'y Gen. No. 83-033; 1982 Op. Att'y Gen. No. 82-085. R.C. 124.57, however, may not constitutionally be enforced to prohibit classified employees from engaging in nonpartisan political activity. See 1983 Op. Att'y Gen. No. 83-095.

The prohibition of R.C. 124.57 applies specifically to any "officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships." Since R.C. 124.57 does not expressly mention officers or employees in the service of a village, the statute does not apply to such officers or employees. See generally Ohio Const. art. XV, §10; R.C. 124.01(A); State ex rel. Giovanello v. Village of Lowellville, 139 Ohio St. 219, 39 N.E.2d 527 (1942).¹

A county dog warden is, as a general matter, in the classified service of the county, and is thus subject to the prohibition of R.C. 124.57. See R.C. 124.11(B); 1984 Op. Att'y Gen. No. 84-070. See generally R.C. 955.12 ("[t]he board of county commissioners shall appoint or employ a county dog warden"). A village marshal, who is designated the chief of police, is, however, appointed by the mayor with the advice and consent of the legislative authority, R.C. 737.15, and thus is not elected in a partisan election. Accordingly, a classified employee is not prohibited by R.C. 124.57 from serving as a village police chief.

Question number three of the compatibility analysis is whether one position is subordinate to, or in any way a check upon, the other, and question number five is whether there is a conflict of interest between the two positions. In order to resolve these questions, the powers and duties of both positions must be examined.

As noted above, a village police chief is appointed by the mayor with the advice and consent of the legislative authority of the village. R.C. 737.15. The legislative authority has the power to remove the police chief upon charges of misconduct filed by the mayor. R.C. 737.171. The powers and duties of the marshal, or police chief, are defined in R.C. 737.18, which provides that:

The marshal shall be the peace officer of a village and the executive head, under the mayor, of the police force. The marshal . . . shall have the powers conferred by law upon police officers in all villages of the state, and such other powers, not inconsistent with the nature of their offices, as are conferred by ordinance.

R.C. 737.19(A) and (B) provide for the marshal's authority over the deputies, officers and employees within the village police department, and R.C. 737.19(C) provides that:

The marshal of a village shall suppress all riots, disturbances, and breaches of the peace, and to that end may call upon the citizens to aid him. He shall arrest all disorderly persons in the village and pursue and arrest any person fleeing from justice in any part of the state. He shall arrest any person in the act of committing any

¹ Even if a village police chief were subject to R.C. 124.57, a county dog warden is appointed or employed by the board of county commissioners, R.C. 955.12, and is not elected in a partisan election. Thus, a classified employee is not prohibited by R.C. 124.57 from serving as a county dog warden. See 1984 Op. Att'y Gen. No. 84-070.

offense against the laws of the state or the ordinances of the village, and forthwith bring such person before the mayor or other competent authority for examination or trial. He shall receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states.

In the discharge of his duties, the marshal shall have the powers and be subject to the responsibilities of constables, and for services performed by him or his deputies, the same fees and expenses shall be taxed as are allowed constables.

The duties of a county dog warden are set forth in R.C. Chapter 955. Pursuant to R.C. 955.12, a county dog warden and deputy county dog wardens are appointed by the board of county commissioners, which also sets their compensation. The dog warden is charged with the enforcement of R.C. 955.01 to 955.27, 955.29 to 955.38 and 955.50. As set forth in R.C. 955.12:

The warden and deputies shall make a record of all dogs owned, kept, and harbored in their respective counties. They shall patrol their respective counties and seize and impound on sight all dogs found running at large and all dogs more than three months of age found not wearing a valid registration tag. . . . If a dog warden has reason to believe that a dog is being treated inhumanely on the premises of its owner, keeper, or harbinger, the warden shall apply to the court of common pleas. . . . for an order to enter the premises, and if necessary, seize the dog. . . . The warden and deputies shall also investigate all claims for damages to animals, fowl, or poultry reported to them under section 955.29 of the Revised Code and assist claimants to fill out the claim form therefor. They shall make weekly reports, in writing, to the board in their respective counties of all dogs seized, impounded, redeemed, and destroyed and of all claims for damage to animals, fowl, or poultry inflicted by dogs. The wardens and deputies shall have the same police powers as are conferred upon sheriffs and police officers in the performance of their duties as prescribed by sections 955.01 to 955.27, 955.29 to 955.38, and 955.50 of the Revised Code. They shall also have power to summon the assistance of bystanders in performing their duties and may serve writs and other legal processes issued by any court in their respective counties with reference to enforcing such sections. County auditors may deputize the wardens or deputies to issue dog licenses as provided in sections 955.01 and 955.14 of the Revised Code. Whenever any person files an affidavit in a court of competent jurisdiction that there is a dog running at large that is not kept constantly confined either in a registered dog kennel. . . . or that a dog is kept or harbored in his jurisdiction without being registered as required by law, the court shall immediately order the warden to seize and impound the animal. Thereupon the warden shall immediately seize and impound the dog complained of. . . .

As summarized in Op. No. 84-070:

Pursuant to R.C. 955.19, all funds received by the dog warden in connection with the administration of R.C. Chapter 955 shall be deposited in a dog and kennel fund. The dog and kennel fund is used by the board of county commissioners to pay the compensation of the county dog warden and to pay other expenses of administering R.C. Chapter 955. R.C. 955.20. Surplus funds in the dog and kennel fund are distributed by the board of county commissioners pursuant to R.C. 955.27.

Id. at 2-227.

It is apparent from an examination of the duties of a village police chief and county dog warden that neither position is a check upon, or subordinate to, the other. The dog warden is appointed by, and responsible to, the board of county commissioners, while the village police chief is appointed by and answers to, the

mayor and the legislative authority of the village. The duties of each office are independent of one another. Neither official is responsible for assigning duties to, or supervising the other. I conclude, therefore, that one position is not subordinate to, or a check upon, the other. Cf. Op. No. 84-070 (neither the position of county dog warden or deputy sheriff is subordinate to, or a check upon, the other).

Question number five addresses the issue of whether there is a conflict of interest between two positions. One person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public. See 1985 Op. Att'y Gen. No. 85-021; Op. No. 84-070; Op. No. 79-111. After examining the duties of village police chief and county dog warden, I have found that each official performs his functions independently of the other. Both a police chief and a dog warden are charged with enforcing the law, although a dog warden may enforce only certain provisions of R.C. 955, while a police chief enforces all state laws and the ordinances of the village. See R.C. 737.18; R.C. 737.19. I thus conclude that one person who serves as both village police chief and county dog warden is not subject to a conflict of interest. Cf. Op. No. 84-070 (there is no conflict of interest between a county dog warden and a deputy sheriff).

The final question of incompatibility asks whether it is physically impossible for one individual to discharge the duties of both a village police chief and a county dog warden. This is a factual question, which must take into account the time demands of each position. Op. No. 79-111. Questions of physical impossibility are usually left to individuals involved on the local level, since such persons have a more precise idea of the demands which would be placed on each officeholder. Id. I believe, however, that in this instance it is apparent from the facts you have presented that it is physically impossible for one person to hold both positions in question. Your letter indicates that the county dog warden is a full time position with fixed hours, Monday through Friday, 8:00 a.m. to 4:30 p.m., and that the dog warden is on call twenty-four hours a day. The village police chief is a part time position with no set hours. There could well be times when a person holding both positions would be called upon to perform the duties of both jobs at the same time. See 1981 Op. Att'y Gen. No. 81-010. See also 1964 Op. Att'y Gen. No. 64-1421 at 2-374 ("[a] person employed full time may not be excused from the responsibilities of full time employment, except as expressly provided by statute"). Thus, on the facts that you have presented, I conclude that it is physically impossible for one person to perform the duties of village police chief and county dog warden.

Accordingly, it is my opinion, and you are advised, that:

1. The positions of dog warden and village police chief are compatible, provided it is physically possible for one person to discharge the duties of both positions.
2. A person who serves as a county dog warden on a full time basis and who is on call twenty-four hours a day, may not serve as a part-time village police chief.