

462

COMPATIBILITY—CLERK OF THE COURT OF COMMON PLEAS AND TOWNSHIP TRUSTEE—OFFICES COMPATIBLE—LIMITS OF PHYSICAL ABILITY TO FAITHFULLY PERFORM DUTIES OF BOTH OFFICES.

SYLLABUS:

The office of clerk of the court of common pleas and the office of township trustee are compatible and may be held by the same person if the duties of the two offices are not so extensive that they would preclude the faithful performance of the duties of each office by the same person.

Columbus, Ohio, May 2, 1957

Hon. Bernard T. McCann, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

Your request for my opinion reads, in pertinent part, as follows:

“May the Clerk of the Court of Common Pleas also be a member of the board of township trustees?”

The initial step in determining whether or not two offices are compatible, and may be held by the same person, is to ascertain whether such a dual holding of offices is either authorized or prohibited by statute. I do not find any statute that specifically authorizes one person to hold the two offices under consideration nor do I find a specific statute that forbids it. Sections 3.11, 309.02, 315.02 and 319.07, Revised Code, provide that one person shall not hold more than one of certain specified offices at the same time and, while clerk of the court of common pleas is one of the offices named, the office of township trustee is not named and thus the holding of the two offices is not specifically prohibited by these sections. Both offices under consideration are elective offices and thus neither office is under classified civil service and there would be no incompatibility from that aspect.

The next step is to determine whether or not either of the offices is subordinate to or is a check upon the other so as to make them incompatible according to the well established test applied in State, *ex rel.*

Attorney General, v. Gebert, 12 C. C., N. S., 274. I have examined the many statutes that specify the duties and powers of the office of clerk of the court of common pleas and the office of township trustee and I do not find that the two offices are in any way a check upon each other or that one is in any respect subordinate to the other in a way that might create conflicting loyalties to the offices occupied by the incumbent.

The only remaining question is whether or not the duties of the two offices are so extensive that they would preclude the faithful performance of the duties of each office by the same person. One of my predecessors discussed whether or not it would be physically impossible for one person to discharge the duties of two offices in Opinion No. 3869, Opinions of the Attorney General for 1941, page 445, and in a situation comparable to the one under consideration said:

“In view of what has been said, however, the test of physical impossibility is to be considered as one of fact rather than one of law to be determined largely by the officer’s own sense of propriety tempered by a proper regard for the interests of the public.”

It is entirely possible that the clerk of the court of common pleas in any one of a number of counties could easily perform the duties of that office at the same time he performed the duties of a township trustee and it is just as possible that it could not be done in many other counties. Therefore, I agree with my predecessor that the question of physical impossibility is one of fact that must be determined in each individual set of circumstances.

Accordingly, in specific answer to your question, it is my opinion that the office of clerk of the court of common pleas and the office of township trustee are compatible and may be held by the same person if the duties of the two offices are not so extensive that they would preclude the faithful performance of the duties of each office by the same person.

Respectfully,
WILLIAM SAXBE
Attorney General