

After the budget of a county for relief expenditures has been approved by the County Commissioners, Section 7, quoted supra, expressly authorizes the County Commissioners to distribute such bond proceeds to the trustees of each township within the county and the proper officials of each city within the county. As to the method of Division, it expressly states that it must be "according to their relative needs for poor relief as determined by such county and as set out in such approved budget". Consequently, in specific answer to your inquiry, it is my opinion that Section 7 of the Carey Act gives express authority to the County Commissioners, after the budget of such county for poor relief expenditures has been approved by the County Commissioners, to distribute the proceeds of the sale of any bonds or notes issued under Section 2 or Section 5 of the Carey Act (116 O. L. 571) to any or all of the cities and townships of such county, according to their relative needs for poor relief, as determined by the county commissioners and as set out in the approved budget.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4825.

OFFICES COMPATIBLE—JUSTICE OF PEACE AND CITY
CIVIL SERVICE COMMISSIONER.

SYLLABUS:

Compatibility of the offices of Justice of the Peace and city civil service commissioner discussed.

COLUMBUS, OHIO, October 23, 1935.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

"In former Attorney Generals' opinions, found on pages 284 of 1913, 2102 of 1917 and 1381 of 1933, it has been held that the offices of justice of the peace and mayor, of either a city or village, are compatible, but in none of these opinions was the question raised in an instance wherein the boundary lines of the township and municipality are identical.

Section 3512 G. C., provides that when the corporate limits of

a municipality and township are identical, all township offices are abolished except justice of the peace and constable, and these shall continue to exercise the functions of their offices under municipal ordinances regulating the disposition of their fees and compensation, etc.

In another Attorney General's opinion, No. 839, page 404 of the 1914 Opinions, it was held as follows:

'A member of a municipal civil service commission cannot hold an office or position in the city or city school district that has the power of appointment, promotion, layoff or suspension of an officer or employe, nor can he hold a position in the classified service in such city or city school district. So far as his holding state or county offices is concerned, each office must be examined to determine whether it comes within the rule as to incompatibility of offices.'

It is assumed that a justice of the peace in a municipality having the same boundaries as the township, remains a township officer, and if so the provisions of section 3808 G. C., with which you are familiar, would have no application.

Question: When the boundaries of a city and township are identical, may a justice of the peace elected therein also hold the office of member of the civil service commission of the city?"

As stated in your letter, Section 3808, General Code, has no application to your question if the Justice of the Peace in the present inquiry remains a township officer. By virtue of Section 1711-1, General Code, a Justice of the Peace is a township officer. Section 3512, General Code, does not change the status of such Justice of the Peace where the corporate limits of a township become identical with those of a city or village. In fact the identity of such officer as a township officer, is specifically retained by the express provisions of Section 3512, General Code. This section reads as follows:

"When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections. All property, moneys, credits, books, records, and documents of such township shall be delivered to the council of such city or village. All rights, interests or claims in favor of or

against the township may be enforced by or against the corporation.”

In the case of *State, ex rel, Vocke vs. Brooklyn Heights*, 122 O. S. 311, Section 3512, General Code, was construed by the Supreme Court in reference to the effect this section had upon the salary of the Justice of the Peace where the boundaries of a township and those of a village become indential. The following statement appears in the *per curiam* opinion at p. 313:

“The relator did not become an employee of the village, nor was his state office as justice of the peace extinguished by the enactment of the ordinance or the provisions of Section 3512, General Code.”

In my opinion reported in *Opinions of the Attorney General for 1934*, Vol. 2, p. 1346 the following statement appears at p. 1349:

“In the case of *State, ex rel, vs. Brooklyn Heights*, 122 O. S. 311, at page 313, it was stated that a justice of the peace in a township having its boundaries coterminous with a village, is not a village officer or employe.”

I am unable to find any statutory provision which would prohibit a Justice of the Peace from simultaneously holding the office of member of a city civil service commission. There is in addition a common law test of incompatibility which would render the holding of more than one office incompatible where one office is subordinate to or in any way a check upon the other office. In addition, it must be physically possible to perform the duties of both offices. The difficulty in giving a categorical answer to your inquiry is increased by the fact that a municipality under Article 18 of the Ohio Constitution may set up a scheme of civil service regulation that would conflict with Sections 486-1, et seq., General Code. This was first decided in the case of *State, ex rel Lentz vs. Edwards*, 90 O. S., 305. In the course of the court's opinion the following appears:

“The manner of regulating the civil service of a city is peculiarly a matter of municipal concern. One of the powers of local self-government is the power of legislating with reference to the local government within the limitations of the constitutional provisions above referred to. As long as the provisions made in the charter of any municipality with reference to its civil service comply with the requirement of Section 10 of Article XV, and do not conflict with any other provisions of the constitution, they are valid

and under the cases referred to discontinue the general law on the subject as to that municipality. That provisions adopted by a city might differ from the general laws within the limits defined was not only expected but the very purpose of the amendment was to permit such differences and make them effective.

The averments of the petition show that the charter for the city of Dayton was framed and adopted under and in accordance with the terms of Article XVIII and duly certified to the secretary of state. By the sections of the charter, which are set forth in the petition, it is further shown that the city of Dayton fully complied with the letter and the spirit of section 10 of Article XV by providing for appointments and promotions in the civil service of the city according to merit and fitness to be ascertained by competitive examinations."

The above decision was subsequently approved by the Supreme Court in a number of cases. One of the recent cases wherein the Supreme Court approved this doctrine, was the case of *Hile vs. Cleveland*, 118 O. S. 99. See also my opinion No. 4040 rendered March 13, 1935.

In view of this fact it is possible that the city in question may in their ordinances or by their charter have created duties for their civil service commissioners which would conflict with the duties of a Justice of the Peace. There might be an express provision prohibiting a civil service commissioner from holding the office of Justice of the Peace. However, if the City in question is operating under Section 486-19, General Code, which provides for municipal civil service commissions, it would appear that there is no conflict between his duties as a civil service commissioner and his duties as a Justice of the Peace. In other words, it will be necessary to examine the set up in each city which has a civil service commission in order to determine whether or not one of their commissioners might hold the office of Justice of the Peace. This, even though the territorial limits of such city are coterminous with those of the township.

It is believed that in view of the above, a more specific answer to your inquiry may not be given at this time.

Respectfully,

JOHN W. BRICKER,
Attorney General.