

OPINION NO. 781

Syllabus:

The offices of "part-time" municipal court judge and "part-time" village solicitor are incompatible where the jurisdiction of the municipal court includes the village which the village solicitor serves.

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To: Rollo M. Marchant, Fayette County Pros. Atty., Washington C.H., Ohio
By: William B. Saxbe, Attorney General, January 14, 1964

You request my opinion as to the compatibility of a municipal court "part-time" judge and the position of "part-time" village solicitor.

Section 1901.11, Revised Code, provides in pertinent part:

"Judges designated as part-time judges by section 1901.08 of the Revised Code shall receive as compensation not less than three thousand dollars per annum, as the legislative authority prescribes, and such judges shall be disqualified from the practice of law only as to matters pending or originating in the courts in which they serve during their terms of office. * * *"

I am informed that the village you have in mind is within Fayette County and the municipal court has jurisdiction within the entire county (Section 1901.08, Revised Code). Thus the municipal judge would be disqualified from practicing before that court. Accordingly, the two positions could not be made compatible by the judge disqualifying himself in matters in which he would have to appear before that court on behalf of the village, since the part-time municipal judge is disqualified from appearing before his court, whether or not he himself is sitting.

This leaves only the possibility that the judge could disqualify himself as village solicitor in all such matters. Section 733.48, Revised Code, however, contemplates that the village may retain legal counsel for all purposes -- not that he be unable to perform an important, and likely substantial, portion of his duties. Accordingly disqualification is not an answer to the conflict.

One of the bases for finding two offices incompatible is a conflict of functions. (See State ex rel. Wolf v. Shaffer,

6 O.N.P. (N.S.) 219, 221; Mason v. State ex rel. McCoy, 58 Ohio St., 30, 54). It is difficult to imagine a case of more conflicting functions than those of a prosecutor and advocate and those of a judge. (See Opinion No. 2143, Opinions of the Attorney General for 1958; Opinion No. 261, Opinions of the Attorney General for 1963, and Opinion No. 390, Opinions of the Attorney General for 1919). Advice to the village on legal matters which might appear before the municipal court would be rendered by the very person who would pass upon such a matter at such time as it should come before the court.

One of my predecessors passed upon the compatibility of the position of municipal court judge and the position of city solicitor, and found that the two were incompatible. (Opinion No. 390, Opinions of the Attorney General for 1919). Since Section 1901.28, Revised Code, makes the jurisdiction of this particular municipal court coextensive with Fayette County, the relationships of both the village solicitor and of a city solicitor to the municipal court are, for these purposes, indistinguishable.

For all of the foregoing reasons, it is my conclusion and you are advised that the offices of "part-time" municipal court judge and "part-time" village solicitor are incompatible where the jurisdiction of the municipal court includes the village which the village solicitor serves.