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COMPATIBILITY — ASSISTANT REGISTRAR, BUREAU OF MOTOR VEHICLES, DEPARTMENT OF HIGHWAY SAFETY (POSITION EXEMPT FROM CLASSIFIED CIVIL SERVICE UNDER §143.08(A)(8), RC) MAY BE A MEMBER OF A COUNTY BOARD OF ELECTIONS AND CHAIRMEN OF COUNTY EXECUTIVE COMMITTEE—SUBJECT TO LIMITS OF PHYSICAL POSSIBILITY.

SYLLABUS:

An Assistant Registrar in the Bureau of Motor Vehicles, Department of Highway Safety, whose position has been exempted from the classified civil service as provided in paragraph (8) of Division (A) of Section 143.08, Revised Code, may at the same time be a member of a county board of elections and chairman of a county executive committee provided it is physically possible to perform the duties of all three positions.

Columbus, Ohio, June 3, 1957

Hon. Gordon Jeffery, Director
Department of Highway Safety, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Mr. N., Assistant Registrar of the Bureau of Motor Vehicles, Department of Highway Safety (an unclassified position in the Civil Service), is Chairman of the Executive Committee of the Erie County Republican Organization and also a member of the Board of Elections of Erie County.

“My purpose in writing is to determine whether Mr. N. can serve as Assistant Registrar and also retain his position as a member of the Board of Elections of Erie County.”

In Section 4501.02, Revised Code, we find the following provision:

“The registrar shall administer the laws of the state relative to the registration of and certificates of title for motor vehicles and the licensing of motor vehicle dealers and salesmen. He may, with the approval of the director of highway safety, adopt and promulgate such form, rules, and regulations as are necessary to carry out all laws he is required to administer. He may, with the approval of the director, appoint such number of assistants,

deputies, clerks, stenographers, and other employees as are necessary to carry out such laws. * * *

It is assumed that the Assistant Registrar here in question has been appointed pursuant to the statutory authorization, and that being the case it would clearly appear that such position is a mere employment rather than a public office.

In the ordinary situation the doctrine of incompatibility of office does not apply to mere employments, but this is subject to certain limitations and qualifications.

One such qualification is that where an employment is in the classified civil service, established under a statute which forbids classified employees to take part in political activity, in which case the employee could not hold political office. Strictly speaking, however, such an individual is not disqualified from the office but is merely subject to removal for cause from his classified employment.

In the case at hand, I am informed that Mr. N's position has been exempted from the classified service as provided in subparagraph (8) of Division (A) of Section 143.08, Revised Code, such exempted positions, by statutory definition, being placed in the unclassified service. See Section 143.08, *supra*.

Mr. N., being in the unclassified service, I can see no reason why he could not lawfully engage in the political activity incident to his position as chairman of a county party executive committee, or that of the board of elections. Moreover, since you are obviously interested primarily in a possible conflict between (1) the position in your department and (2) one or more of the other offices held, we need not consider any question of compatibility as between such chairmanship and membership on the board of elections, except to note that such dual employment was approved by one of my predecessors in Opinion No. 3616, Opinions of the Attorney General for 1934, page 1746, the syllabus in which is as follows:

“An Investigator in the Public Utilities Commission, who is not in the Classified Civil Service, may at the same time be a member of a County Board of Elections and Chairman of a County Executive Committee, if it is physically possible to perform the duties of all three positions.”

Assuming, however, that the principles of the doctrine could be deemed to apply to the position in question, it is difficult to see any point

of contact which would result in a conflict of interest. The chief Ohio authority on the doctrine is *State, ex rel. Attorney General, v. Gebert*, 12 O.C.C., N. S., 274. At page 275 of that decision it is said:

“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 my opinion no subordination or check exists in the instant case. As to the question of physical impossibility of performance of the duties of both positions, this is normally one of fact for resolution by the appointing authority. I assume, so far as the position in your department is concerned, that you have given consideration to the “physical impossibility” question and have concluded that appointee’s other duties will not be such as to interfere with the discharge of the duties required of him in your department. In any event, this is a question of fact for your determination and on this point. I am in agreement with the writer of the 1934 opinion, above cited, in which it was said, page 1748:

“After an examination of the statutes and the duties of these positions, it would appear that there is nothing to prevent one and the same person from holding the three positions in question at the same time if it is physically possible to perform the duties of the three positions. This office has, in numerous opinions, held that the question of physical possibility to discharge the duties of various positions is a question of fact rather than of law. A few of the recent opinions of this office to this effect are as follows: Opinions of the Attorney General for 1933, Vol. I, page 360; Vol. I, page 763; Vol. II, page 1213; Opinion No. 2289, rendered February 16, 1934.”

Accordingly, it is my opinion that an Assistant Registrar in the Bureau of Motor Vehicles, Department of Highway Safety, whose position has been exempted from the classified civil service as provided in paragraph (8) of Division (A) of Section 143.08, Revised Code, may at the same time be a member of a county board of elections and chairman of a county executive committee, provided it is physically possible to perform the duties of all three positions.

Respectfully,
WILLIAM SAXBE
Attorney General