

**OPINION NO. 769**

**Syllabus:**

The office of member of a county soldier's relief commission, created under authority of Section 5901.02, Revised Code, is not incompatible with the office of auditor of a municipal corporation.

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**To: Thomas Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio**  
**By: William B. Saxbe, Attorney General, January 7, 1964**

I have your request for my opinion in which you ask whether

one person may simultaneously serve as city auditor and as a member of the soldier's relief commission of the county.

Chapter 5901, Revised Code, deals with veteran's relief. Section 5901.02, Revised Code, creates a soldier's relief commission in each county, whose duty it is to supervise the granting of relief to needy soldiers, sailors, marines, airmen, and their dependents. The position of member of the commission is not a full-time job (Opinion No. 1401, Opinions of the Attorney General for 1952), and there is no statutory restriction against a member of the commission serving in another position.

Pursuant to Section 733.11, Revised Code, a municipal auditor must keep the books of the city. According to Section 733.12, Revised Code, he must audit all accounts of city departments and, in compliance with Section 733.13, Revised Code, he has a duty to prevent appropriations from being overdrawn. There is no specific statutory restriction preventing a city auditor from serving in another position.

There being no statutory prohibition, the question is whether the two positions are incompatible under the common law. The generally accepted rule in this regard is that 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. State, ex rel. v. Gebert, 12 C. C. (NS) 274 at 275.

An examination of the statutory duties of municipal auditors and of a soldier's relief commission does not reveal any provisions which would constitute one superior or subordinate to the other, or under which one office would act as a check upon the other.

The question whether it is physically possible for one person to discharge the duties of the two offices concurrently is generally a question of fact to be determined from each peculiar situation. As noted earlier, however, the duties of a member of a soldier's relief commission are not of a full-time nature, and there is no requirement that a city auditor serve in a full-time capacity. Accordingly, it would appear physically possible for one person to hold the two positions here concerned.

It is therefore my opinion that the office of member of a county soldier's relief commission, created under authority of Section 5901.02, Revised Code, is not incompatible with the office of auditor of a municipal corporation.