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COMPATIBILITY—OFFICES OF VILLAGE MARSHAL AND  
DEPUTY SHERIFF ARE INCOMPATIBLE.

SYLLABUS:

The office of village marshal and that of deputy sheriff are incompatible.

Columbus, Ohio, March 11, 1957

Hon. Fred F. Fox, Prosecuting Attorney  
Noble County, Caldwell, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Will you please advise me whether or not a person can serve in the capacity as Village Marshal and Deputy Sheriff and his salary be paid partially by the County and partially by the Village? It so happens that the particular village made reference to is the county seat.”

Section 737.15, Revised Code, provides for the appointment of marshals and reads as follows:

“Each village shall have a marshal, designated chief of police, appointed by the mayor with the advice and consent of the legislative authority of the village, who is an elector thereof, and who shall continue in office until removed therefrom as provided by sections 733.35 to 733.39, inclusive, of the Revised Code. In case of the removal of a marshal or chief of police of a village, an appeal may be had from the decision of the legislative authority to the court of common pleas to determine the sufficiency of the cause of removal. Such appeal shall be taken within ten days from the finding of such legislative authority.”

The duties of a village marshal are set out in Sections 737.18 and 737.19, Revised Code, as follows:

Section 737.18, Revised Code:

“The marshal shall be the peace officer of a village and the executive head, under the mayor, of the police force. The marshal, and the deputy marshals, policemen, or nightwatchmen under him shall have the powers conferred by law upon police officers in all villages of the state, and such other powers, not inconsistent with the nature of their offices, as are conferred by ordinance.”

Section 737.19, Revised Code:

“The marshall of a village shall suppress all riots, disturbances, and breaches of the peace, and to that end may call upon the citizens to aid him. He shall arrest all disorderly persons in the village and pursue and arrest any person fleeing from justice

in any part of the state. He shall arrest any person in the act of committing any offense against the laws of the state or the ordinances of the village, and forthwith bring such person before the mayor or other competent authority for examination or trial. He shall receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states.

“In the discharge of his duties, the marshal shall have the powers and be subject to the responsibilities of constables, and for services performed by him or his deputies, the same fees and expenses shall be taxed as are allowed constables.”

It would appear that duties thus imposed by statute on a village marshal are such as to make that office a full time occupation, and to leave no time available to the incumbent for the discharge of the duties of another office.

The common law rule of incompatibility in effect in Ohio, as stated in the case of *State, ex rel. v. Gebert*, 12 C. C., N. S., 274, is as follows:

“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 Opinion No. 2691, Opinions of the Attorney General for 1934, page 708, it was held that the office of village marshal and that of township constable were incompatible where the limits of the township extended beyond the limits of the village, or were identical with the corporate limits of the village.

Since the authority of a deputy sheriff extends over the whole county, the reasoning in the 1934 opinion, *supra*, would be equally applicable, for it is evident that a village marshal could not be maintaining the peace in his village and at the same time be performing duties somewhere else in the county. In this regard we may note the ruling in Opinion No. 2013, Opinions of the Attorney General for 1928, page 991. There it was held that a village marshal could not also be a county dog warden because it was against public policy for an officer who enforces the public peace to hold any office which would interfere to so great an extent with such duties specifically enjoined by statute.

Another opinion, Opinion No. 656, Opinions of the Attorney General for 1913, page 921, held that a chief of police of a city may not legally serve as a deputy sheriff because:

“The duties of chief of police of a city are such as to require all his time, or of not, require that he hold himself in readiness to respond to call of duty at any time during night or day, which, of necessity, precludes him from accepting appointment to the position of deputy sheriff or devoting any of his time thereto, which even possibly might interfere with the lawful performance of his duties as chief of police.”

The village marshal is also a chief of police as stated by Section 737.15, Revised Code, so that the opinion quoted next above may be said to control the question at issue here.

Thus the question you have asked comes within the meaning of the second clause of State, *ex rel. v. Gebert, supra*, that it is physically impossible for one person to discharge the duties of both a village marshal and a deputy sheriff.

Accordingly, it is my opinion that the office of village marshal and that of deputy sheriff are incompatible.

Respectfully,  
WILLIAM SAXBE  
Attorney General