

132

## SYLLABUS:

The office of village marshal is incompatible with the position of deputy clerk of courts of a municipal court. (Opinion No. 199, Opinions of the Attorney General for 1957, approved and followed.)

Columbus, Ohio, April 4, 1963

Hon. Donald D. Simmons  
Prosecuting Attorney  
Wood County  
Bowling Green, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“I respectfully request your opinion regarding the following matter:

“The Village of Walbridge, Ohio, employs a village marshal as its chief law enforcement officer in the village.

“The Perrysburg Municipal Court has jurisdiction with the Mayor’s Court in the Village of Walbridge. The Village Marshal was recently employed as a deputy clerk by the Municipal Court of the city of Perrysburg.

“My question on the foregoing facts is as follows:

“Is it compatible for the Marshal of the Village of Walbridge to be employed as a deputy clerk of court of the City of Perrysburg, Ohio?

“I would appreciate very much your ruling on this matter since the legality of salary payments made by the village of Walbridge to the Village Marshal has been questioned.”

Section 737.15, Revised Code, which provides for the appointment of village marshals, 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 section 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 general powers and duties of village marshals are set forth in Sections 737.18 and 737.19, Revised Code. The former section provides that:

*“The marshall 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.”*

(Emphasis added)

Section 737.19, *supra*, provides as follows:

“The marshal 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 marshall 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.”

In addition to the duties imposed by the above code provisions, Section 1901.32, Revised Code, provides in pertinent part that:

“(D) Every police officer of any municipal corporation or police constable of a township within the territory is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as such police officer or police constable, and shall perform such duties in respect to cases within his jurisdiction as are required of him by a judge of said court or by the clerk or bailiff or deputy bailiffs thereof, without additional compensation.”

Section 1901.31, Revised Code, provides for the appointment of deputy clerks of a municipal court and reads in pertinent part as follows:

“(H) Deputy clerks may be appointed by the clerk and shall receive such compensation payable in semi-monthly installments out of the city treasury as the clerk may prescribe. Each deputy clerk shall take an oath of office before entering upon the duties of his office, and when so qualified, may perform the duties appertaining to the office of the clerk. The clerk may require any of the deputy clerks to give bond of not less than three thousand dollars, conditioned for the faithful performance of his duties.

“The clerk or a deputy clerk shall be in attendance at all sessions of the court, although not necessarily in the courtroom, and may administer oaths to witnesses and jurors and receive verdicts.”

It should be noted that, under this section, a deputy clerk is authorized to perform the duties pertaining to the office of the clerk. Those duties, which are quite extensive, are set forth in Section 1901.31, *supra*.

Since there are no statutory or constitutional provisions prohibiting one person from simultaneously holding the two positions in question, it becomes necessary to consider the common law rule of incompatibility as stated in the case of *State ex rel. Attorney General v. Gebert*, 12 C. C. (N.S.) 274.

“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.”

This office has held in past opinions that the office of village marshal is a full time position, requiring the marshal to be readily accessible both day and night and subject to call at any time.

In Opinion No. 199, Opinions of the Attorney General for 1957, I had occasion to consider the compatibility of the office of village marshal and position of deputy sheriff. In reaching the conclusion that the two positions were incompatible, I stated at page 63:

“It would appear that the 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 above reasoning is equally applicable to the situation presented by your request.

It is my opinion, therefore, and you are accordingly advised that the office of village marshal is incompatible with the position of deputy clerk of courts of a municipal court. (Opinion No. 199, Opinions of the Attorney General for 1957, approved and followed.)

Respectfully,  
WILLIAM B. SAXBE  
Attorney General