

OPINION NO. 70-035**Syllabus:**

The position of a member of village council and a special deputy sheriff are not incompatible.

To: Elmer Spencer, Adams County Pros. Atty., West Union, Ohio
By: Paul W. Brown, Attorney General, March 24, 1970

I have before me your request for my opinion concerning the compatibility of the positions of village councilman and special deputy sheriff.

Relevant to a determination of this question is Section 731.12 Revised Code, which reads as follows:

"Each member of the legislative authority of a village shall have resided in the village one year next preceding his election, and shall be an

elector of the village. No member of the legislative authority shall hold any other public office, be interested in any contract with the village, or hold employment with said village, except that such member may be a notary public, a member of the state militia, or a volunteer fireman of said village, provided that such member shall not receive any compensation for his services as a volunteer fireman of the village in addition to his regular compensation as a member of the legislative authority. Any member who ceases to possess any of such qualifications or who removes from the village shall forfeit his office."

Said statute lists the impermissible types of employment and follows such prohibition with a list of enumerated exceptions. Clearly the statute disallows village councilmen from holding any other public office. Thus, if the position of special deputy sheriff is considered a public office, such position is incompatible with that of village councilman. The issue of whether a special deputy sheriff is a public officer is answered in 49 Ohio Jurisprudence, Second Edition, Sheriffs, Marshals, etc., Section 2, at page 18. This section states that although opinion is divided, the view recognized by statute (Section 325.17, Revised Code) and followed by the Supreme Court is that deputies generally are not public officers. I quote from 49 Ohio Jurisprudence 2d, at page 20, as follows:

"* * * The reasons for the rule that deputies generally are not public officers are (1) that in order to constitute a position a public office the duties of the position must be independent of the control and direction of a superior officer and (2) that the incumbent must be clothed with some part of the sovereignty of the state, to be exercised in the interest of the public as required by law. /44 O. Jur. 2d 512, Public Officers, 23/ Since a deputy sheriff has no independent powers or duties and is endowed by law with no part of the sovereignty of the state, it has been said to be clear that a deputy sheriff is not a public officer within the meaning of the Constitution and statutes of Ohio. /Opinion No. 5487, Opinions of the Attorney General for 1942, page 704/ Also, one of the characteristics of a public office is tenure of office /44 O. Jur. 2d 492, Public Officers, § 6/ and a deputy sheriff has no definite tenure. /Opinion No. 5487, supra/ The mere fact that one takes an oath and is required to give a bond does not constitute him a public officer. /44 O. Jur. 2d 495, Public Officers, § 8/"

Also, see Opinion No. 6674, Opinions of the Attorney General for 1965, which interpreted Section 731.12, supra, as not proscribing public employment for village councilmen so long as said employment was not with the village.

Consequently, since the position of special deputy sheriff is not a public office nor a form of village employment, I see no conflict between this position and that of village councilman.

Therefore, it is my opinion and you are hereby advised that the positions of a member of village council and a special deputy sheriff are not incompatible.