

Note from the Attorney General's Office:

1961 Op. Att'y Gen. No. 61-2064 was overruled
by 2006 Op. Att'y Gen. No. 2006-012.

2064

OFFICE OF MEMBER OF A COUNTY SOLDIERS' RELIEF COMMISSION IS NOT INCOMPATIBLE WITH THE OFFICE OF PROSECUTING ATTORNEY OF THE COUNTY—§5901.02, R.C.

SYLLABUS:

The office of member of a county soldiers' relief commission, created under authority of Section 5901.02, Revised Code, is not incompatible with the office of prosecuting attorney of the county.

Columbus, Ohio, March 16, 1961

Hon. William H. Conner, Prosecuting Attorney
Hardin County, Kenton, Ohio

Dear Sir:

I have your request for my opinion in which you ask whether one person may simultaneously serve as prosecuting attorney of a county and as a member of the soldiers' relief commission of the county.

Sections 309.01 to 309.17, Revised Code, deal with the election, duties, etc., of the prosecuting attorney. While Section 309.02, Revised Code, makes the office of prosecuting attorney incompatible with certain other offices, the office of member of the soldiers' relief commission is not made incompatible.

Sections 5901.01 to 5901.15, inclusive, Revised Code, deal with the soldiers' relief commission. Section 5901.02, Revised Code, creates a com-

mission composed of five members to be appointed by a judge of the court of common pleas. I find no statutory restriction against a member of the commission serving as prosecuting attorney.

In view of the above, if the offices in question are incompatible, it must be as a consequence of the common-law-rule. In Ohio, the general rule on this subject is stated in *State, ex rel. Attorney General v. Gebert*, 12 C.C., N.S. 274, page 275, 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.”

The main task of the soldiers' relief commission is to supervise the granting of relief to needy soldiers, sailors, marines, and airmen, and of their needy parents, wives, widows, and minor children. The actual work in this regard is done through employees of the commission and through soldiers' relief committees, which are established by the commission in townships and in wards of cities.

The duties of the county prosecutor are, in general, concerned with representing the state in criminal matters in the county, and with representing the various county officers.

An examination of the statutes pertaining to the prosecuting attorney and to the soldiers' relief commission does not, with one possible exception, reveal any provisions which would constitute one superior or subordinate to the other, nor which would provide either any form of check upon the other. The one possible exception arises from the fact that under Section 309.09, Revised Code, the prosecuting attorney is the legal advisor of the commission.

I note that my predecessor in Opinion No. 1380, Opinions of the Attorney General for 1957, page 715, held that the office of veterans' service officer and assistant prosecuting attorney, of the same county, are incompatible and may not be held concurrently by the same person. At page 716 of that opinion it is stated :

“In Opinion No. 4130, Opinions of the Attorney General for 1948, page 594, it was held :

“‘The offices of county veterans service officer and prosecuting attorney are incompatible, and may not legally be held by the same person.’

“The pertinent reason for this opinion is found on page 597, where it is stated :

“The prosecuting attorney is the legal advisor to the members of the soldiers’ relief commission for the county in which he holds office for which such members have been appointed.’

“It appears very clear that the person who is by law the legal advisor of a board could not be appointed by that board to a responsible position without violating the generally accepted rules as to incompatibility of offices. As such legal adviser it would manifestly be *within his power to advise the board in his own interest* and while he could not be said to hold a direct check or control over himself, as such officer, he would be subjected to the temptation *to mold his advice to further his own interests.*” (Emphasis added)

The veterans’ service officer is employed by the soldiers’ relief commission under Section 5901.07, Revised Code, which section gives such officer the duties of advising and assisting “persons in the armed forces of the United States, veterans of any war, and the wives, widows, children, parents, and dependents of such veterans in presenting claims or obtaining rights or benefits under any law of the United States or of this state.”

Members of the commission receive the actual expenses incurred in the performance of their duties and a fair compensation for their services—fixed by the board of county commissioners (Section 5901.04, Revised Code). The salary of the veteran’s service officer is set by the soldiers’ relief commission.

The fact that the prosecuting attorney is the legal advisor of the commission does not, in my opinion, make it within his power to advise the commission in his own interest. While this may be possible as to a prosecuting attorney serving as veterans’ service officer (Opinion No. 1380, *supra*), I see no reason that this should result where the prosecuting attorney serves as a member of the commission and since the duties of the two offices are not related, I conclude that neither of the positions in question is subordinate or superior to the other, nor is either a check upon the other.

As to physical possibility, the prosecuting attorney is not required to devote his full time to the duties of the office. Neither does the office of member of a soldiers’ relief commission require full-time service (Opinion No. 1401, Opinions of the Attorney General for 1952, page 329;

Opinion No. 6813, Opinions of the Attorney General for 1956, page 521). It will be noted that Section 5901.12, Revised Code, requires the commission to meet only annually, with such additional meetings as necessity may require. I am of the opinion, therefore, that it is physically possible for one person to perform the duties of both offices.

Accordingly, it is my opinion and you are advised that the office of member of a county soldiers' relief commission, created under authority of Section 5901.02, Revised Code, is not incompatible with the office of prosecuting attorney of the county.

Respectfully,
MARK MCELROY
Attorney General