

2873.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN  
FRANKLIN, COSHOCTON, CRAWFORD, GREENE, LORAIN AND  
SENECA COUNTIES.

COLUMBUS, OHIO, February 17, 1922.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

2874.

OFFICES INCOMPATIBLE—CHIEF OF POLICE—PROBATION OFFICER.

*The duties of the office of Chief of Police are incompatible with those of a probation officer, and the same person is not entitled to receive compensation for services rendered relative to both offices.*

COLUMBUS, OHIO, February 20, 1922.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

“May a chief of police of a city legally be appointed and receive salary as a probation officer of the probate or juvenile court?”

The common law rule of incompatibility of offices as stated by the Circuit Court, in the case of *State ex rel. vs. Gebert*, 12 C. C., n. s., page 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.”

The duties of a probation officer are defined by the provisions of section 1663 G. C.; and briefly may be summarized as follows: Such an officer is charged with the duty of investigating complaints filed against minors; of inquiring into the facts and circumstances surrounding alleged cases of delinquency, neglect, or dependency; his presence in court is required upon the hearing of cases by the juvenile judge, and he is required to supply in such cases any information which the court may request; such an officer is also charged with the duty of serving warrants issuing from such court, and generally to perform all duties relative to said office and incident to the proper functioning of said juvenile court.

The duties of a chief of police of a city are defined by provisions of sections 4372, 4378 and 4379 of the General Code, under the provisions of which the chief of police is made the chief executive officer over the police department, subject to the

authority of the director of public safety and the ordinances of council. Among other duties he is charged with the exclusive control, subject to such rules and regulations as may be prescribed by the director of public safety, of the stationing and transfer of all patrolmen and other officers and employes of the police department. It is also observed that under provisions of section 4378 G. C. the police force is expressly required to preserve the peace, protect persons and property, and obey and enforce all ordinances of council and all criminal laws of the state and of the United States. Analyzing the duties of the office cited and imposed by law upon the chief of police, it would seem obvious that the nature of such office and employment requires that the chief of police shall devote full time to the performance of said duties and should hold himself in constant readiness to enforce the ordinances of council and preserve the peace of the municipality. A similar view of the duties of the chief of police is held by a former opinion of this department and found in Opinions of the Attorney-General, Volume I, 1913, page 421.

Upon consideration, therefore, it would seem conclusive that the duties of the offices considered are incompatible, and that a chief of police of a city may not lawfully perform the duties of a probation officer, or receive the compensation of such an officer while acting in the capacity of chief of police.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

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2875.

FELONY CASES—CLERK OF COURTS SHOULD PAY TO CITY TREASURER FEES TAXED FOR CHIEF OF POLICE OF CITY IN SAID CASES—SEE SECTION 3016 G. C. (109 O. L. 173).

*Under the provisions of section 3016 G. C., as amended in 109 O. L. 173, moneys coming into the hands of the Clerk of Courts in felony cases, which have been taxed as fees for the chief of police of a city, in view of the further provisions of section 4270 G. C., should be paid to the city treasurer. In other words, the phrase "persons entitled thereto" used in section 3016 G. C., refers to persons who are legally entitled to receive the payment of such funds and does not refer alone to persons entitled to receive such funds for their own use.*

COLUMBUS, OHIO, February 20, 1922.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date reads as follows:

"We are respectfully requesting you to furnish this department your opinion upon the following matter:

Section 3016 G. C., as amended, 109 O. L. 173, provides that in felonies when the defendant is convicted, the fees of the various magistrates and their officers shall be inserted in the judgment of conviction and when collected shall be disbursed by the clerk of courts to the persons entitled thereto.

Question 1. Is the chief of police who receives a salary from the city, and who is authorized under section 4534 G. C., to tax the same fees as a