

securities, assets or other property so belonging to the decedent or belonging to or standing in the name of the decedent and one or more other persons, until such examination is had. However, when the conditions of the section are complied with the corporation and the other interested parties are entitled as of right to the consent. (Matter of Rock, 98 Miscellaneous, 544).

Without, however, definitely deciding that no further steps should be taken under section 5348-2, permit me to call attention to another course which seems free from doubt and by following which the taxing authorities should be able to ascertain whether or not the contents of these two packages contained evidences of property belonging to the decedent and therefore subject to the tax.

It is within the power of the commission to apply for an appraisalment under section 5341. On such application the probate court is required to direct the auditor to make an appraisalment. The auditor in his capacity as appraiser may issue subpoenas and compel the attendance of witnesses and the production of books and papers. These powers would seem to be ample to the ends suggested.

If it is not desired that the expense and delay of a formal appraisalment by the auditor be incurred, the commission, acting through the auditor or otherwise, may by appropriate action call the attention of the probate court to the suspected existence of property belonging to the decedent and not shown in the inventory of the estate, if the property in question is not so shown. Thereupon the probate court may, of course, exercise the powers above referred to in the securing of evidence bearing upon the question.

In other words, the examination of the contents of the safety deposit box has at least disclosed the existence of these packages and raised the suspicion that they contain evidence of assets belonging to the decedent. If the representatives of the decedent's estate object to such immediate examination of the contents as will at once resolve all doubts, the other means above suggested remain open to the taxing authorities to arrive at the facts in the matter.

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

1023.

COURT STENOGRAPHER—MAY LEGALLY SERVE AS STENOGRAPHER  
FOR PROSECUTING ATTORNEY—QUALIFICATION—COMPENSATION.

*A court stenographer may legally serve as a prosecuting attorney's stenographer, providing that it is physically possible to properly perform the duties of both positions, and such stenographer under such circumstances is entitled to receive additional compensation from funds allowed to the prosecuting attorney for the payment of a stenographer.*

COLUMBUS, OHIO, February 26, 1920.

HON. V. W. FILLIATRAULT, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your inquiry of recent date is as follows:

“Could the court stenographer, drawing a salary from the county in such capacity, at the same time serve as the prosecuting attorney's stenographer and draw a salary from the county for such additional service?”

Your inquiry raises the issue as to whether or not the positions of court stenographer and a prosecuting attorney's stenographer are incompatible under the law.

Section 1546 G. C., which authorizes the appointment of a court stenographer, is as follows:

"When in its opinion the business requires it, the court of common pleas of a county may appoint a stenographic reporter as official stenographer of such court, who shall hold the appointment for a term not exceeding three years from the date thereof, and until a successor is appointed and qualified, unless removed by the court, after a good cause shown, for neglect of duty, misconduct in office, or incompetency. Such official stenographer shall take an oath to faithfully and impartially discharge the duties of such position."

Section 1547 G. C. authorizes the appointment of assistant stenographers and other sections, which need not be quoted, refer to the duties of such court stenographers.

Section 1550 G. C., which relates to the compensation of court stenographers, provides:

"Each such stenographer shall receive such compensation as the court making the appointment shall fix, not exceeding twenty-four hundred dollars each year in counties where more than three judges of the court of common pleas hold court regularly, and in all other counties not exceeding eighteen hundred dollars per annum. Such compensation shall be in place of all per diem compensation in such courts. Provided, however, that in case such appointment shall be for a term of less than one year, such court may allow a per diem compensation not exceeding the sum of ten dollars per day, for each day such stenographer shall be actually engaged in taking testimony or performing other duties under the orders of such court, which allowance shall be in full for all services so rendered.

The auditor of such county shall issue warrants on the treasurer thereof for the payment of such compensation in equal monthly installments, when the compensation is allowed annually, and when in case of services per diem, for the amount of the bill approved by the court, from the general fund upon the presentation of a certified copy of the general entry of appointment and compensation of such stenographers."

Other sections of the General Code, pertinent to the consideration of your inquiry, which relate to the appointment and compensation of a stenographer employed by a prosecuting attorney are as follows:

"Sec. 2914. On or before the first Monday in January of each year in each county, the judge of the court of common pleas, or if there be more than one judge, the judges of such court in joint session, may fix an aggregate sum to be expended for the incoming year, for the compensation of assistants, clerks and stenographers of the prosecuting attorney's office."

"Sec. 2915. The prosecuting attorney may appoint such assistants, clerks and stenographers as he deems necessary for the proper performance of the duties of his office, and fix their compensation, not to exceed in the aggregate the amount fixed by the judge or judges of the court of common pleas. Such compensation after being so fixed shall be paid to such assistants, clerks and stenographers monthly from the general fund of the county treasury upon the warrant of the county auditor."

The statutes do not provide any positive inhibition against a court stenographer performing services in addition to the duties as such court stenographer and receiving compensation therefor. It is essential to next consider whether or not the two posi-

tions you refer to are incompatible under the common law. This rule in Ohio, as stated in the case of *State ex rel. vs. Gebert*, 12 O. 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.”

It is the opinion of the attorney-general that there is nothing in the law making either of the positions you mention subordinate to or a check upon the other, and if it is physically possible for a court stenographer to properly perform and discharge the duties of both positions, the same may be done and such court stenographer under such circumstances would be entitled to receive additional compensation from the funds allowed to the prosecuting attorney for the payment of a stenographer.

In Opinion No. 379, rendered on June 9, 1919, to the Bureau of Inspection and Supervision of Public Offices and found at p. 618 of Opinions of the Attorney-General for 1919, it was held that the positions of fire chief and street commissioner were compatible.

In Opinion No. 391, rendered on June 13, 1919, to Hon. Phil H. Wieland, Prosecuting Attorney and found at p. 642 of Opinions of the Attorney-General for 1919, it was held that the offices of county recorder and mayor of a city or village were not incompatible.

It is believed that the same reasoning set forth in said opinions by analogy will apply to the situation presented in your communication.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1024.

SLOT MACHINE—GAMBLING DEVICE—VIOLATION OF SECTIONS 13056  
AND 13066 G. C.

*The operation of a slot machine, where the player may receive trade checks ranging in value from five cents to one dollar by dropping a nickel in said machine, is a gambling device notwithstanding the player receives a package of gum with every play, and in violation of sections 13056 and 13066 G. C.*

COLUMBUS, OHIO, February 26, 1920.

HON. EDWARD GAUDERN, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—Your recent communication is as follows:

“Will you kindly advise me whether in your opinion the operation of a gum vending machine is punishable under the laws of Ohio. This machine as described to me is placed on the counter of grocery stores and pool rooms; the customer puts a nickel in the slot and draws a bunch of gum and a number of trade checks like those enclosed. The machine is also operated by putting in these trade checks and drawing out one to five, ten and twenty of them in return, similar to the old nickel slot machine, and the proprietor will cash the checks in trade, either cigars or candy or groceries. The machines have the stamp of the federal government upon them, the license fee having been paid.