

OPINION NO. 81-009**Syllabus:**

The positions of special deputy and county commissioner are incompatible due to a conflict of interest.

To: William F. Schenck, Greene County Pros. Atty., Xenia, Ohio

By: William J. Brown, Attorney General, March 13, 1981

I have before me your letter of January 8, 1981, in which you request my opinion concerning the compatibility of the positions of county commissioner and special deputy sheriff. It is my understanding that your particular concern is with the potential conflict of interest which might result when the individual, as county commissioner, makes decisions affecting the sheriff's department in which he serves as a special deputy.

The position of special deputy is not expressly provided for in the Revised Code. However, various court decisions and Attorney General opinions have recognized the authority of a sheriff to hire special deputies. State ex rel. Geyer v. Griffith, 80 Ohio App. 477, 76 N.E.2d 294 (Ct. App. Allen County 1946); 1977 Op. Att'y Gen. No. 77-027; 1968 Op. Att'y Gen. No. 68-112; 1965 Op. Att'y Gen. No. 65-177. The duties of a special deputy may vary from county to county. I have been advised by your office that a special deputy in Greene County possesses all the powers normally accorded to a deputy sheriff. The names of the special deputies are kept on an active list and the sheriff calls upon these individuals for assistance as the need arises. The special deputies do not receive regular wages, but there is a special deputies fund in existence from which these individuals receive payment

from time to time. Your letter indicates that the individual in question would not be working as a special deputy; however, in a telephone conversation between your office and a member of my staff, it was stated that the particular individual in question may continue to work as a special deputy although he will not take any compensation from the sheriff's department.

A county commissioner is responsible for overseeing the various departments of county government. This duty extends to the functioning of the sheriff's department. See, e.g., R.C. 305.19 (the board of county commissioners must examine annual reports made by the sheriff and take the necessary steps to correct errors). As a result, a county commissioner who served as a special deputy would be forced to supervise the activities of the department in which he so served. It is to be expected that a special deputy would develop a sense of loyalty to the sheriff and his fellow officers. Such loyalty would, however, interfere with the objective performance of his duties as county commissioner, creating an impermissible conflict of interest.

In addition, a county commissioner, pursuant to R.C. 305.20, must examine the claims of the sheriff for payment based on services rendered to the county by the sheriff's department. R.C. 305.20 reads as follows:

Before making any payment to the sheriff of moneys claimed by him for official services rendered for the county, the board of county commissioners shall make a full examination and adjustment of the account of the sheriff to the date of such settlement, showing the amount of money in his hands belonging to such county, or with which he is chargeable at such date, and shall pay over to him only the balance that is found due him on such settlement after deducting all moneys found to be in his hands, or with which he is chargeable.

As a result, a county commissioner who served as a special deputy would be examining the claim of the department in which he served as a special deputy. In certain circumstances, he could be supervising claims resulting from his own activity as a special deputy. This situation would clearly cause the officeholder to experience a conflict of interest which could lead to divided loyalties and affect the performance of his official duties. If conflicts of interest, such as the ones discussed in the above paragraphs, are found to exist, the positions in question must be deemed incompatible. 1979 Op. Att'y Gen. No. 79-111.

It is, therefore, my opinion, and you are advised, that the positions of special deputy and county commissioner are incompatible due to a conflict of interest.