

OPINION NO. 82-042

Syllabus:

The position of deputy county treasurer is incompatible with that of mayor of a municipality within the same county.

To: George E. Pattison, Clermont County Prosecuting Attorney, Batavia, Ohio
By: William J. Brown, Attorney General, June 17, 1982

I have before me your request for my opinion concerning the compatibility of

the positions of deputy county treasurer and mayor of a municipality within the same county.

A deputy county treasurer is employed pursuant to R.C. 321.04 which provides that "[e]ach county treasurer may appoint one or more deputies, and he shall be liable and accountable for their proceedings and misconduct in office." R.C. 3.06 states that "[a] deputy, when duly qualified, may perform any duties of his principal." The county treasurer serves as a member of the county budget commission. R.C. 5705.27. Thus, pursuant to R.C. 3.06, the chief deputy treasurer may perform the treasurer's duties as a member of the budget commission. 1934 Op. Att'y Gen. No. 3605, vol. III, p. 1721.

The mayor of a municipality is elected pursuant to R.C. 733.02, in the case of a city, and R.C. 733.24, in the case of a village.¹ In either instance the mayor is vested with the executive power of the municipality. R.C. 733.01; R.C. 733.23. In addition to supervising the daily operations of municipal government, the mayor also assists the legislative authority of the municipality in preparing a tax budget. R.C. 5705.28.

The compatibility of the positions of mayor and deputy county treasurer has never been addressed in an opinion of the Attorney General. However, the issue of whether a deputy of a member of a county budget commission may hold a public office in a political subdivision within the jurisdiction of that commission has been discussed frequently.

In 1933 Op. Att'y Gen. No. 1022, vol. II, p. 1038, a prior Attorney General concluded that a deputy treasurer could not also serve as a township clerk. This conclusion was based on the fact that the deputy treasurer would, in representing the county treasurer on the budget commission, be examining the budget of the township for which he was clerk. An identical analysis was used in 1960 Op. Att'y Gen. No. 1650, p. 584 in determining that a deputy county auditor could not also serve as a township clerk. See also 1953 Op. Att'y Gen. No. 2999, p. 391 (office of deputy county auditor incompatible with that of village mayor).

I can see no basis for differentiating between the positions addressed in 1960 Op. No. 1650, 1953 Op. No. 2999 and 1933 Op. No. 1022 and those specified in your letter. As was previously discussed, a deputy county treasurer may carry out the duties of the county treasurer on the budget commission. In so doing, he would be reviewing the budget of the municipality in which he serves as mayor. See R.C. 5705.31; R.C. 5705.32. The resulting conflict of interest is identical to that discussed in 1960 Op. No. 1650, 1953 Op. No. 2999 and 1933 Op. No. 1022. Such a conflict between two positions must result in a conclusion that one individual cannot serve in both capacities. 1979 Op. Att'y Gen. No. 79-III.

Therefore, it is my opinion, and you are advised, that the position of deputy county treasurer is incompatible with that of mayor of a municipality within the same county.

¹I note that the manner in which a mayor is elected and the duties which are to be performed by that officer may be altered by the formation of an alternative plan of government, R.C. Chapter 705, or by the charter of the municipality. It is my understanding, however, that there is no alternative form of government or charter provision which is applicable in this instance.