

OPINION NO. 80-088

Syllabus:

So long as it is physically possible for one person to perform the duties of a part-time deputy sheriff and a part-time secret service officer, the positions are compatible.

To: Robert B. Hines, Holmes County Pros. Atty., Millersburg, Ohio
By: William J. Brown, Attorney General, December 17, 1980

I have before me your letter requesting my opinion on whether the positions of part-time deputy sheriff and part-time secret service officer are compatible.

The traditional test for compatibility, taken from State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274, 276 (Cir. Ct. Franklin County 1909), states that "[o]ffices are considered incompatible when one is subordinate to, or in any way a check upon the other." A deputy sheriff is appointed under R.C. 311.04 to assist in law enforcement within the county. R.C. Chapter 311 does not, however, give any indication that the deputy sheriff exercises any form of control over the county prosecutor's secret service officers. Likewise, R.C. 309.07, which allows the county prosecutor to appoint a secret service officer to "aid him in the collection and discovery of evidence to be used in the trial of criminal cases and matters of a criminal nature," does not grant to the secret service officer any authority to control the actions of the deputy sheriff. Therefore, under the test stated in Gebert, one person may serve as both a deputy sheriff and a secret service officer.

An examination of potential conflicts of interest is also a necessary part of the compatibility analysis. "The common law rule, designed in part to avoid divided loyalties, also requires an examination of whether a person serving in two different public capacities is subject to a conflict of interest between the two positions." 1979 Op. Att'y Gen. No. 79-111 at 2-371. The duties of a deputy sheriff and a secret service officer involve the enforcement of the law. In both capacities there is a responsibility to protect the public from those individuals who might break the law, although the means used to accomplish this protection may differ depending on whether one acts in the capacity of a deputy sheriff or a secret service officer. A deputy sheriff has the power to arrest those individuals whom he suspects have committed crimes. A secret service officer attempts to gather evidence which may eventually lead to an arrest; however, he does not possess the authority to perform the arrest himself. See 1973 Op. Att'y Gen. No. 73-036; 1933 Op. Att'y Gen. No. 1668, vol. II, p. 1532. In this respect, therefore, I can find no potential for a conflict of interest.

It is, of course, possible that some unforeseen conflict of interest might arise in a particular situation. See, e.g., 1971 Op. Att'y Gen. No. 71-027 (a part-time secret service officer cannot be used to investigate his full-time employer). Should such a conflict occur, it would be the responsibility of the individual experiencing the conflict to remove himself from that situation. 1970 Op. Att'y Gen. No. 70-170.

There is a question as to whether it is physically possible for one person to perform the functions of both positions. This is, however, a concern which is more readily dealt with by the parties involved than by formal opinion. 1979 Op. Att'y Gen. No. 79-III. Moreover, it is clear that neither position comes within the purview of R.C. 124.57, which prevents political activity by classified public servants.

As past Attorney General opinions have indicated, dual employments such as the one you present may ultimately have a beneficial impact upon job performance. In 1957 Op. Att'y Gen. No. 461, p. 131, a prior Attorney General found the positions of secret service officer and juvenile court probation officer to be compatible, and found support for that conclusion in the fact that the skills gained while performing the duties of one office could be helpful in carrying out the obligations of the other office. I believe this to be equally true of a secret service officer and a deputy sheriff.

Therefore, it is my opinion, and you are advised, that, so long as it is physically possible for one person to perform the duties of a part-time deputy sheriff and a part-time secret service officer, the positions are compatible.