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SYLLABUS:

The office of County Court Judge is incompatible with the office of Village Solicitor when said village is within the judicial district of the County Court.

Columbus, Ohio, July 2, 1963

Hon. Clyde W. Osborne Prosecuting Attorney Mahoning County Youngstown, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

"Is the office of County Court Judge compatible with the office of Village Solicitor when said village is within the judicial district of said County Court?"

The test of incompatibility of public offices most commonly applied in Ohio is that stated in *State ex rel. Attorney General* v. *Gebert*, 12 C.C. (N.S.) 274 (1909), 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 to discharge the duties of both." 410 OPINIONS

Authority for the creation of the office of village solicitor stems from Section 733.48. Revised Code, which provides:

"When it deems it necessary, the legislative authority of a village may provide legal counsel for the village, or for any department or official thereof, for a period not to exceed two years, and provide compensation for such counsel."

The territorial jurisdiction of the County Court is outlined in Section 1907.11. Revised Code, as follows:

"There is hereby created in each county of the state, in which the territorial jurisdiction of a municipal court or municipal courts is not coextensive with the boundaries of the county, a court to be known as the county court with jurisdiction throughout a county court district consisting of all territory within the county not subject to the territorial jurisdiction of any municipal court."

In your request you have stated that the village is within the judicial district of the County Court. It is therefore quite possible that the village solicitor may be required to prosecute a case before the very court on which he sits as judge. This situation would be contrary to our system of checks and balances wherein the prosecutor is to effectively present his side of the case and the judge is to impartially consider both sides of the case.

Not only would there be a conflict of interest between the function of the judge and the function of a prosecutor, but it would be contrary to law for one person to discharge the duty of prosecutor and judge at the same time.

Section 1907.081, Revised Code, provides in part:

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"A judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in said county court during his term of office."

From a reading of Section 1907.081, Revised Code, it is clear that a person may not be an advocate and a judge at the same time in the County Court.

On the basis of the foregoing, it is my opinion and you are accordingly advised that, the office of County Court Judge is in-

compatible with the office of Village Solicitor when said village is within the judicial district of the County Court.

Respectfully,
WILLIAM B. SAXBE
Attorney General