

1989

OFFICE OF MEMBER OF A COUNTY SOLDIERS' RELIEF COMMISSION IS NOT INCOMPATIBLE WITH THE OFFICE OF MAYOR OF A MUNICIPAL CORPORATION—§5901.02, R.C.

SYLLABUS:

The office of member of a county soldiers' relief commission, created under authority of Section 5901.02, Revised Code, is not incompatible with the office of mayor of a municipal corporation.

Columbus, Ohio, February 2, 1961

Hon. Homer B. Gall, Jr., Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“May the Mayor of a municipality or village also serve on
The Soldiers and Sailors Relief Board under Section 5901.02?”

Public offices are said to be incompatible when they are made so by statute, or when by reason of the common law rule of incompatibility they are rendered incompatible.

Since you refer to “the Mayor of a municipality or village” I assume that you are concerned with mayors of cities and mayors of villages. Section 733.02, Revised Code, provides that the mayor of a city shall be elected for a term of two years and that he shall be an elector of the city. Section 733.24, Revised Code, provides that the mayor of a village shall be elected for a term of two years and that he shall be an elector

of the village. I am unable to find any statute precluding either type of mayor from serving on the soldiers' relief commission, created by Section 5901.02, Revised Code, or from serving in any other position for that matter.

Chapter 5901., Revised Code, deals with veterans' relief. Section 5901.02, *supra*, creates a soldiers' relief commission in each county, whose duty it is to supervise the granting of relief to needy soldiers, sailors, marines, airmen, and their dependents. The position of member of the commission is not a full-time job (See Opinion No. 1401, Opinions of the Attorney General for 1952, page 329, at 331), and there is no statutory restriction against a member of the commission serving in any other position.

I might also note that past opinions of this office have consistently held that both a mayor and a member of a soldiers' relief commission may hold other positions. For example, see Opinion No. 6127, Opinions of the Attorney General for 1956, page 8, holding that a mayor of a city may serve as deputy clerk of the court of common pleas, Opinion No. 778, Opinions of the Attorney General for 1959, issued on August 24, 1959, holding that a person may, at the same time, serve as mayor of a village and member of the village school board; Opinion No. 1401, Opinions of the Attorney General for 1952, page 329, holding that a person may, at the same time, serve as member of a soldiers' relief commission and as clerk in the office of the county engineer; and Opinion No. 6813, Opinions of the Attorney General for 1956, page 521, holding that a member of a soldiers' relief commission may, at the same time, serve as deputy sheriff in the county.

Further, since both positions here concerned are not in the classified service, Section 143.41, Revised Code, forbidding "classified" employees from engaging in political activity, is not here pertinent.

There being no statutory prohibition, the question is whether the two positions could be held incompatible under the common law. The generally accepted rule in this regard is that 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 (*State, ex rel. v. Gebert*, 12 C.C. (N.S.) 274, at 275).

An examination of the statutory duties of mayors and of a soldiers' relief commission does not reveal any provisions which would constitute

one superior or subordinate to the other, nor which would provide either any form of check upon the other.

As to physical possibility, this is generally a question of fact to be determined from the existing situation. As noted earlier, however, the duties of a member of a soldiers' relief commission are not of a full-time nature; also, there is no requirement that a mayor serve in a full-time capacity. Accordingly, it would appear physically possible for one person to hold the two positions here concerned.

I am of the opinion, therefore, that the office of member of a county soldiers' relief commission, created under authority of Section 5901.02, Revised Code, is not incompatible with the office of mayor of a municipal corporation.

Respectfully,

MARK MCELROY

Attorney General