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OFFICE OF MEMBER OF BOARD OF ELECTIONS—COMPATIBLE WITH POSITION OF JUDGE OF COUNTY COURT—UNLESS COUNTY JUDGE IS CANDIDATE FOR ELECTIVE OFFICE—§3501.15, R.C.

SYLLABUS:

There is no incompatibility between the offices of member of a board of elections and county court judge unless the county court judge is currently a candidate for elective office within the meaning of Section 3501.15, Revised Code.

Columbus, Ohio, March 4, 1960

Hon. Wray Bevens, Prosecuting Attorney  
Pike County, Waverly, Ohio

Dear Sir:

Your request for my opinion asks whether there is any incompatibility between the office of county judge (not a candidate for office) and the office of member of the county board of elections. I assume that by "county judge" you mean a judge of the county court.

On reviewing the statutes I find no restriction on a county court judge holding another office. Regarding a member of the board of elections, Section 3501.15, Revised Code, prohibits a person from serving as a member if he is a candidate for an office to be filled at an election. Since the person here concerned is not a candidate for public office, this section does not apply. Thus, if the offices in question are incompatible, it must be as a consequence of the common law rule.

The rule in Ohio 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. Attorney General v. Gebert*, 12 C.C. (N.S.), 274; 32 Ohio Jurisprudence, 908).

There do not appear to be any duties of the one office in question which are inconsistent with the duties of the other office, nor will the performance of the duties of one result in antagonism or a conflict of duties.

Neither is one office subordinate to the other. A county court judge

is elected to office (Section 1907.051, Revised Code), a member of the board of elections is appointed by the secretary of state (Section 3501.05, Revised Code).

Physical possibility is, of course, a question of fact and not of law. In this regard, however, it should be noted that both offices here concerned are part-time jobs and that there should be no question as to the ability of one person to perform the duties of both offices.

Accordingly, in specific answer to your inquiry, it is my opinion that there is no incompatibility between the offices of member of a board of elections and county court judge unless the county court judge is currently a candidate for elective office within the meaning of Section 3501.15, Revised Code.

Respectfully,

MARK McELROY  
Attorney General