

**Note from the Attorney General's Office:**

1951 Op. Att'y Gen. No. 51-1014 was overruled by 1978  
Op. Att'y Gen. No. 78-022.

1014

COMPATIBLE—INCOMPATIBLE—SAME PERSON PROHIBITED FROM CONCURRENTLY HOLDING OFFICES OF TOWNSHIP TRUSTEE AND PRISON GUARD, OHIO PENITENTIARY—SECTION 486-23, G. C.

SYLLABUS:

Section 486-23, General Code, has the effect of prohibiting the same person from holding concurrently the offices of township trustee and prison guard at the Ohio Penitentiary.

Columbus, Ohio, December 20, 1951

Hon. Guy G. Cline, Prosecuting Attorney  
Pickaway County, Circleville, Ohio

Dear Sir:

I am in receipt of your letter of recent date, which reads as follows:

“Mr. F. K. of Scioto Township, Pickaway County, Ohio, has requested me to obtain an opinion on the following question: Can Mr. K. hold the office of Scioto Township Trustee and also that of a guard at the Ohio Penitentiary, Columbus, Ohio? The question appears to be one of whether the two offices are incompatible or whether it is physically possible to perform the duties of both offices in the proper manner.

“Mr. K. informs me that his duties as a guard in the Ohio Penitentiary provides for his employment between the hours of 7:00 A. M. and 4:00 P. M. of each day except Sunday and Monday. He has the entire day of Monday available to perform the duties of Township Trustee and those hours after 4:00 P. M. of each week day. According to G. C. Section 3294, a Trustee cannot draw compensation from more than 100 days per diem. I am unable to find any requirement for the number of days that a Trustee is required to work nor have I been able to find any requirement as to the number of hours a day. In so far as I am informed it appears that the duties of Township Trustee of Scioto Township have been carried out.

I would appreciate your opinion as to whether the two offices are incompatible or whether it is possible to perform and hold both offices.”

A guard at the Ohio Penitentiary is placed in the classified civil service of the state under the terms of Section 486-8, General Code, being a person in the employ of the state and the position of guard not being listed in the unclassified service. The question then arises as to whether there is any prohibition, by statute or the common law, against a person in the classified civil service holding at the same time the elective office of township trustee.

There is no section in the code expressly declaring that a person shall not hold the two offices in question but Section 486-23, General Code, does not affect the question and its impact must be considered. That section provides :

“No officer, employe, or subordinate in the classified service of the state, the several counties, cities and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution or payment from any officer, employe, or subordinate in the classified service of the state, the several counties, cities or city school districts thereof; nor shall any officer or employe in the classified service of the state, the several counties, cities and city school districts thereof be an officer in any political organization *or take part in politics other than to vote as he pleases and to express freely his political opinions.*” (Emphasis added.)

It will be seen that by these provisions, a person in the classified civil service of the state is forbidden to engage in any political activity other than to vote or to freely express his political opinions. The next question which presents itself is whether holding the elective office of a township trustee is to take part in politics within the meaning of Section 486-23.

In a number of opinions written by my predecessors it has been held in analogous cases that holding an elective office was engaging in politics within the prohibition of Section 486-23, *Supra*, and that such elective offices could not be held concurrently with a position in the classified civil service. See Opinion No. 1074, Opinions of the Attorney General for 1929, p. 1619; Opinion No. 1285, Opinions of the Attorney General for 1929, p. 1904; Opinion No. 3398, Opinions of the Attorney General for 1931, p. 922.

In Opinion No. 862, Opinions of the Attorney General for 1951, I had occasion to consider a similar problem and held:

"1. A person who is appointed dog warden of a county is by virtue of Section 486-8, General Code, in the classified service, and under the provisions of Section 486-23, General Code, is forbidden to take part in politics, except to vote as he pleases and to express his political opinions.

"2. Holding an appointment as deputy sheriff amounts to taking part in politics within the contemplation of Section 486-23, General Code, and a deputy sheriff, accordingly is ineligible to hold the position of county dog warden."

Following the reasoning I expressed therein, I can but conclude that holding an elective office is engaging in political activity within the meaning of Section 486-23, *supra*, and that such an office cannot be held at the same time that a position is held in the classified civil service.

In specific answer to your question, therefore, it is my opinion that Section 486-23, General Code, has the effect of prohibiting the same person from holding concurrently the offices of township trustee and prison guard at the Ohio Penitentiary.

Respectfully,

C. WILLIAM O'NEILL

Attorney General