

1107.

OFFICES COMPATIBLE—COURT CONSTABLE AND LAW LIBRARIAN—  
CONDITION NOTED.*SYLLABUS:*

*A court constable appointed under authority of Section 1692, General Code, may hold the position of law librarian, created under Section 3054, General Code, if it is physically possible for him to perform the duties of both positions.*

COLUMBUS, OHIO, October 26, 1929.

HON. JESSE K. BRUMBAUGH, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication of recent date, as follows:

“Can the same person hold the position of law librarian and court bailiff at the same time?”

For a number of years previous to this year the law librarian of the county had been receiving a salary of \$500.00 and for the office of court bailiff the county had been paying a salary of from \$1300.00 to \$900.00 per year, varying at different times. These two offices were held by two persons. Beginning with this year, as a measure of economy, the court appointed the law librarian to act also as bailiff. The holder of these two offices is to receive as compensation the \$500.00 payable as law librarian and \$50.00 per month, or \$600.00 a year, for the services as court bailiff. The legality of this arrangement has been questioned, and my answer to it was that there was nothing illegal in the arrangement, having in mind Section 11 of the Ohio General Code. I am therefore asking you to give me your opinion in the matter.”

The question submitted by the above inquiry would seem to be governed by the rule recognized in cases where offices or duties are said to be compatible or incompatible. The rule of incompatibility of offices is well stated in the opinion of Dustin, J., in the case of *State vs. Gebert*, 12 C. C. (N. S.) 274, as follows:

“Offices are said to be 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.”

This rule has been constantly cited and followed in the opinions of this office. As to the qualifications of such officers mentioned, it has been held in former opinions of this department, and the conclusion is well supported by other authority, that it is for those who appoint these officers and fix their compensation to determine whether or not it is physically possible for the same person to fill both positions.

The office of law librarian is created under Section 3054, General Code, which reads as follows:

“The judges of the court of common pleas of any county in which there is a law library association which furnishes to all of the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, upon the appointment by the trustees

of such library association of a person to act as librarian thereof, shall fix his compensation, which shall be paid from the county treasury. In counties where not more than one judge of the court of common pleas holds regular terms of court at the same time, the compensation so to be paid such librarian shall not exceed the sum of five hundred dollars per annum."

I assume that the office of court bailiff, concerning which you inquire, is the one created under Section 1692 of the General Code, sometimes known as court constable, and this opinion is based on that assumption. Section 1692 reads:

"When, in the opinion of the court, the business thereof so requires, each court of common pleas, court of appeals, superior court, insolvency court, in each county of the state, and, in counties having at the last or any future federal census more than seventy thousand inhabitants, the probate court may appoint one or more constables to preserve order, attend the assignment of cases in counties where more than two common pleas judges regularly hold court at the same time, and discharge such other duties as the court requires. When so directed by the court, each constable shall have the same powers as sheriffs to call and impanel jurors, except in capital cases."

An examination of the above sections fails to disclose any situation where one of the offices might be a check upon the other, and inasmuch as the court bailiff is appointed by the common pleas judge, and the law librarian by the library trustees, it could not be said that either office is subordinate to the other.

Specifically answering your question, therefore, I am of the opinion that the office of court bailiff or constable and that of law librarian are compatible and the same person may be appointed to discharge the duties of both offices, and may receive compensation for both positions if it is physically possible for him to perform the duties of both positions.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1108.

LAND TRUST CERTIFICATES—SELLER LICENSED AS REAL ESTATE  
BROKER.

*SYLLABUS:*

*Land trust certificates are instruments evidencing an interest in real estate, and anyone selling such instruments, should be licensed as a real estate broker, as provided in Sections 6373-25 and 6373-26, General Code.*

COLUMBUS, OHIO, October 26, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"We respectfully request your opinion on the following question: