

**OPINION NO. 66-181**

**Syllabus:**

A Captain in the Municipal Police Department may not hold the position of Safety Service Director, while he is on leave of absence from the Police Department.

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**To: Robert G. Rawson, Washington County Pros. Atty., Marietta, Ohio**  
**By: William B. Saxbe, Attorney General, December 21, 1966**

Your request for my opinion reads in pertinent part as follows:

"1. May a captain in the Municipal Police Department, who is on leave from that department, accept appointment to the position of Safety-Service Director for said City for the period of time he is on leave?

"2. If the answer to the first question is YES, may such individual continue to contribute to the Police Pension Fund on the basis of the salary he would draw as Police Captain?

"3. Also, if the answer to the second question is in the affirmative, does such individual receive retirement credits as a member of the Municipal Police Department while on leave and while paying into the Police Pension Fund?

"4. If the answer to the second question is NO, what retirement fund

may such person join? May he join the Public Employees Retirement System?"

I believe that your questions may be resolved by reference to the doctrine of compatibility of public offices as set forth in the celebrated case of The State of Ohio ex rel. Attorney General vs. Frank Gebert, 12 C.C. (N.S.) 274, wherein it was stated at page 275 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 duty of both."

Section 737.02, Revised Code, states the duties of the director of Public Safety in part as follows:

"Under the direction of the mayor, the director of public safety shall be the executive head of the police and fire departments and the chief administrative authority of the charity, correction, and building departments. He shall have all powers and duties connected with and incident to the appointment, regulation, and government of such departments except as otherwise provided by law. He shall keep a record of his proceedings, a copy of which, certified by him, shall be competent evidence in all courts." (Emphasis added)

Applying the rule stated in the Gebert case, supra, it is obvious it would be inappropriate for one person to hold the offices of Captain in the Municipal Police Department and Director of Safety Service concurrently for the reason that the former office is subordinate to the latter.

Thus, the question becomes whether the fact that the Captain is on leave from the Municipal Police Department while holding the position of Director of Safety Service makes the rule stated in the Gebert case, supra, inapplicable or inoperative.

The following is quoted from the Opinion of the Court in State, ex rel. Neffner vs. Hummel, 142 Ohio St. 324 at page 331, and is pertinent to our inquiry:

"A leave of absence properly granted to one in the classified service does not have the effect of taking the person to whom such leave is granted out of the employ of the state or out of the classified service. By such leave the employee forfeits none of his rights under the civil service law and therefore it would be a strange doctrine which would protect all the rights conferred upon the employee during such leave and yet would relieve

such employee from all obligations and restrictions embodied in the same law which protects his rights. \* \* \*"

In view of the above quotation, it should not make a difference in applying the rule of compatibility of public office that a leave has been granted the Captain for the term of his appointment as Safety Service Director. It is conceivable that he could administer his duties as Safety Service Director in such a manner as to affect the responsibilities of a Captain in the Municipal Police Department, an office which he may reacquire at will.

Accordingly, it is my opinion and you are advised that a Captain in the Municipal Police Department may not hold the position of Safety Service Director, while he is on leave of absence from the Police Department. Since questions number two through four contained in your request letter depend upon an affirmative answer to question number one, I have not herein undertaken to answer these questions.