Note from the Attorney General's Office:

1951 Op. Att'y Gen. No. 51-0862 was overruled by 1984 Op. Att'y Gen. No. 84-070.

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1. DOG WARDEN—COUNTY—CLASSIFIED SERVICE—FORBIDDEN TO TAKE ANY PART IN POLITICS—EXCEPTION, VOTE AS HE PLEASES AND EXPRESS POLITICAL OPINIONS—SECTIONS 486-8, 486-23 G. C.

2. DEPUTY SHERIFF—APPOINTMENT—AMOUNTS TO TAKING PART IN POLITICS—DEPUTY SHERIFF MAY NOT HOLD POSITION OF COUNTY DOG WARDEN.

SYLLABUS:

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 any 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.

Columbus, Ohio, October 26, 1951

Hon. J. Harry Leopold, Prosecuting Attorney
Putnam County, Ottawa, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"The position of dog warden of Putnam County is at present vacant. J. R., who is the present duly appointed and acting Deputy Sheriff of Putnam County, has been acting dog warden since the resignation of W. B.

"At a recent civil service examination for the position of dog warden, Mr. R. placed high, and the Putnam County Commissioners are desirous of appointing him dog warden, and also have him retain his present appointment as Deputy Sheriff.

"Can one, who is the duly appointed and acting Deputy Sheriff, also hold the position as dog warden for the same county? If the answer to this question is 'Yes', will you please advise what county funds it may be paid from?"

In Opinion No. 802, Opinions of the Attorney General for 1927, page 1411, the then Attorney General concluded that a sheriff could not

legally be appointed to the position of dog warden. His reasoning was based principally on the fact that whereas Section 5652-7, General Code, had formerly provided that the county sheriff should seize and impound dogs running at large, this section, as amended by the 87th General Assembly and effective August 10, 1927, provided that such duties were to be performed by a county dog warden and deputy dog wardens appointed by the county commissioners. I quote from this opinion:

> "It will be observed that prior to the enactment of House Bill No. 164 sheriffs were charged with certain duties relative to the administration of the law relating to the licensing and registration of dogs. By the amendment the legislature created new positions, those of dog warden and deputy dog warden, and provided for the incumbents of these new positions, the same duties which formerly devolved on the sheriff with respect to the dog registration law. At the same time the legislature specifically repealed the law (formerly Section 5652-7), which had charged the sheriff with these duties.
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> "The cardinal rule for construction of all laws is to determine and give effect to the intention of the legislature which enacted the law. It seems to me that when the legislature in specific terms repeals a law which provides that certain duties shall be performed by a certain public officer and simultaneously enacts a law charging another officer with the performance of these same duties, we can get no other meaning from its action in so doing than that it intended that the two offices should be filled by two different distinct persons.
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> "It will also be noted that House Bill No. 164 apparently contemplates the placing of the responsibility for the administration of the dog registration law on the county commissioners who are empowered to appoint or employ a county dog warden and such deputy dog wardens as they shall deem necessary, and to fix their compensation, whereas under the previous law the sheriff appointed his deputies, with the approval of the Common Pleas Court. Section 2830, General Code.
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> "It also seems apparent from an examination of the act that it was intended thereby to provide that the expense incident to the administration of the act, including the compensation of the county dog warden, is to be paid from the special fund known as the dog and kennel fund consisting of the money received from the registration fees provided for in the act, whereas formerly the sheriff for his duties in the administration of the law was paid from the general county fund. * * *
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> "There is no specific statutory inhibition upon a sheriff acting as dog warden or upon a dog warden acting as sheriff;

> nor do I think the duties of the two positions are such as to make them incompatible at common law. Upon consideration, however, of the apparent intent of the legislature, I am constrained to the opinion that a county sheriff can not legally hold the position of dog warden, and it of course follows that the deputy sheriffs as such are not empowered to perform the duties of dog warden or deputy dog warden."

Since a deputy sheriff exercises no power in his own right, but derives all of his powers from his principal, the sheriff, it would appear that the reasoning of the 1927 opinion would be equally applicable to your question.

However, another and more compelling reason leads me to the same conclusion. The position of dog warden not being listed in Section 486-8, General Code, as being in the unclassified service, by the terms of such statute it is placed in the classified civil service. On the other hand, deputy sheriffs, by the terms of paragraph 9 of such statute, are placed in the unclassified service and thus serve only at the pleasure of their principal, an elective officer.

Section 486-23, General Code, makes the following provisions as to political activity by persons in the classified service:

> "* * * nor shall any officer or employe in the classified service of the state, the several counties, cities and city school districts thereof * * * *take part in politics* other than to vote as he pleases and to express freely his political opinions."
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> (Emphasis added.)

There have been a number of opinions by Attorneys General holding certain positions incompatible by reason of the inhibition of Section 486-23, supra. In nearly every case the position which it was held that a classified employe could not legally occupy was a distinctly political position. For example:

Member of board of elections, Opinion No. 2545, Opinions of the Attorney General for 1928, page 2054.

Township clerk, Opinion No. 1074, Opinions of the Attorney General for 1929, page 1619.

Village mayor, Opinion No. 1285, Opinions of the Attorney General for 1929, page 1904.

Constable, Opinion No. 3398, Opinions of the Attorney General for 1931, page 922.

However, I note an opinion which dealt with a situation quite similar to the one you present. In Opinion No. 338, Opinions of Attorney General for 1933, page 360, it was held:

> "1. The county dog warden is prohibited by the civil service laws from accepting employment as deputy sealer of weights and measures. Accepting such public employment would amount to taking part in politics, in violation of section 486-23, General Code."

It was shown in this opinion that by the provisions of Section 2615, General Code, the county auditor was *ex officio* the county sealer of weights and measures, and that he was authorized to appoint a deputy to act for him in that capacity.

Opinion No. 544, Opinions of the Attorney General for 1929, page 837, appears to me to be correct as to conclusion and persuasive in its reasoning. It was held:

> "A member of the city police department who is in the classified civil service may not legally hold the office of a member of the city board of health at the same time, without violating the provisions of Section 486-23, General Code, which prohibit any officer or employe in the classified civil service from taking part in politics other than voting as he pleases and expressing freely his political opinions."

I am impressed with the language of this opinion as found on page 839:

> "Considering the word 'politics' in its more restricted sense as having to do with political party activities, the question arises as to whether or not a member of the city board of health appointed by the mayor, who is an elected officer, is engaged in carrying on and administering the policies of the party of which the appointing officer is a member. Whether or not in the particular instance, the mayor may have been elected upon the platform of a political party or upon his own independent platform would not alter the situation if his appointees are in harmony with the policies, opinions or principles of government for which he stands. Certainly, a public official who has been elected to office to perform the duties of his office in accordance with certain policies and principles of government, is going to make appointments with a view of fulfilling his obligations to the electors in an endeavor to carry out the policies and principles of his platform, particularly when appointing such an executive and administrative officer as a member of the city board of health. An appointed

> officer in carrying out and putting into practice for an elected officer as his appointee, certain governmental principles, theories of government, or policies, is probably rendering just as definite a service to those principles, theories or policies of such elected officer as he would be if actively campaigning on their behalf prior to election."

I believe that the reasoning as quoted above from the 1929 opinion applies here. It, therefore, would follow that the holding of an appointment as a deputy sheriff would constitute taking part in politics within the contemplation of Section 486-23, General Code.

Accordingly, it is my opinion and you are advised:

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 any 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.

Respectfully.

C. WILLIAM O'NEILL
Attorney General