

**OPINION NO. 81-020****Syllabus:**

1. Whether the positions of municipal court clerk and assignment commissioner, typist, stenographer, or statistical clerk are compatible is a factual determination, dependent upon the duties assigned to each position by the municipal court.
2. A municipal court clerk may not receive additional compensation for the performance of the duties of an assignment commissioner, typist, stenographer, or statistical clerk for the court, because the duties of these court aides fall within the scope of the office of clerk. (1951 Op. Att'y Gen. No. 224, p. 72 modified.)

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**To: Fleet Freeman, Coshocton County Pros. Atty., Coshocton, Ohio**  
**By: William J. Brown, Attorney General, April 20, 1981**

I have before me your request for an opinion concerning whether the clerk of the Coshocton County Municipal Court may be appointed to various court aide positions and receive compensation therefor. Specifically, you ask:

If the court, pursuant to section 1901.33 R.C., appoints an assignment commissioner, typist, stenographer and statistical clerk; and, accordingly, if the legislative authority sets the compensation therefor, may the court appoint the clerk of court to any one or more of these established court aide positions, and may the clerk receive compensation for such appointment in addition to the compensation she is paid in accordance with section 1901.31 R.C. even though the combined salaries of the clerk of the municipal court would exceed the statutory limitation for the salary of the clerk of the common pleas court? [See Section 325.08 and 1901.31(C) R.C.]

The first question that your problem presents is whether the positions of municipal court clerk and assignment commissioner, typist, stenographer, or statistical clerk are compatible. In order for two positions to be compatible, neither position may be subordinate to the other, nor may the duties of one position act as a check upon the duties of the other. There can be no conflict of interest between positions, which would create a situation where the demands and loyalties of one position adversely affect the performance of the other position's duties. One person must also be able to physically perform the duties of both positions. See 1979 Op. Att'y Gen. No. 79-111 for a further analysis of these issues concerning compatibility.

In this situation, it would appear that the resolution of the three compatibility issues set forth above is a factual issue. R.C. 1901.31(E), (F), and (G) set out the duties of a municipal court clerk. R.C. 1901.31(E) includes the language: "He [the clerk] shall. . .perform all other duties which the judges of the court may prescribe. . . ." Division (F) states in part: "He [the clerk] shall have other powers and duties as are prescribed by rule or order of the court." Thus, the court is granted broad discretion in assigning duties to the clerk. R.C. 1901.33 states in part: "Assignment commissioners shall assign cases for trial and perform such other duties as the court directs." Again, the court is granted broad discretion in prescribing duties for the assignment commissioner. A former Attorney General concluded in 1951 Op. Att'y Gen. No. 224, p. 72, that the clerk of common pleas court could also serve as the court assignment commissioner. It was found that neither office had control over the other, nor was one office subordinate to the other. The same reasoning would appear to apply to a municipal court clerk and

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assignment commissioner. However, the specific duties assigned to each office by a particular court should be examined in determining whether the positions are compatible.

Although the duties of statistical clerk, typist, and stenographer are not specified by statute, the court would presumably have a great deal of flexibility in prescribing the duties of these positions also. Again, the specific duties assigned to the clerk and court aides must be examined in determining whether the positions are compatible. An analysis of the three issues raised above in connection with compatibility—subordination, conflict of interest, and physical possibility—would depend on the duties and responsibilities assigned to each of the positions by the court. Indeed, the answers to these questions might vary from court to court. These factual determinations can best be resolved by the interested parties who are familiar with the particular demands of each position. See 1980 Op. Att'y Gen. No. 80-073; Op. No. 79-111.

Assuming that the positions of clerk of court and the various court aides are compatible, it still must be determined whether a clerk could receive additional compensation for the performance of the court aides' duties. As noted in Op. No. 80-073, there is authority for the proposition that one person may receive compensation for each of the different public positions he holds as long as he does not draw double pay for the same service. See State ex rel. Wolf v. Shaffer, 6 Ohio N.P. (n.s.) 219, 18 Ohio Dec. 303 (C.P. Fulton County 1906), aff'd by circuit court without report, cited in State ex rel. Taylor v. Coughlin, 6 Ohio N.P. (n.s.) 101, 103, 18 Ohio Dec. 289, 291 (C.P. Ashtabula County 1907); 1951 Op. No. 224. However, as explained in Op. No. 80-073, Ohio Const. art. II, §20, does prohibit a municipal court clerk from receiving an in-term increase in compensation. See Edgecomb v. Rosen, 29 Ohio St. 2d 114, 279 N.E.2d 870 (1972). If a court aide's duties would also be naturally incident to the duties of the clerk, or within the scope of his office, then the clerk may not receive additional compensation during his term of office for the performance of these duties. See Donahey v. State ex rel. Marshall, 101 Ohio St. 473, 129 N.E. 591 (1920); Lewis v. State ex rel. Harrison, 21 Ohio C.C. 410, 11 Ohio Cir. Dec. 647 (Hamilton County 1901), aff'g 8 Ohio N.P. 84, 10 Ohio Dec. 537 (C.P. Hamilton County 1901); State ex rel. Taylor v. Coughlin; 1972 Op. Att'y Gen. No. 72-121. This proposition should be considered especially in light of R.C. 1901.31(E) and (F), which grant the court power to prescribe duties for the clerk other than those expressly specified by statute. See State ex rel. Mikus v. Roberts, 15 Ohio St. 2d 253, 239 N.E.2d 660 (1968) (explained in greater detail in Op. No. 80-073); 1951 Op. Att'y Gen. No. 913, p. 723. Pursuant to R.C. 1901.33, the judges may, but are not required to, appoint the various court aides (in contrast to R.C. 1901.32, which requires the court to appoint a bailiff). The court may in its discretion choose not to appoint such court aides, and, instead, assign additional duties to the court officers or employees already serving the court, such as the clerk. If the duties assigned to the clerk were naturally incident to the duties of clerk, then he would not be entitled to additional compensation.

Upon examining those duties of a clerk specified in R.C. 1901.31, it could be said that other administrative responsibilities, such as assigning cases for trial, are incident to a clerk's duties. In State ex rel. Driscoll v. Jeffrey, 158 Ohio St. 43, 106 N.E.2d 644 (1952), the court stated that a court of common pleas has two alternate methods for assigning cases to trial. It may vest in the clerk of courts the duties of assigning cases to trial; or it may appoint an assignment commissioner to perform those duties, thereby relieving the clerk of such duties. Thus, it can be inferred that the duties of assigning cases are within the scope of a clerk's office, if an assignment commissioner is not appointed. The court has the option of creating the position of assignment commissioner or charging the clerk of court with the responsibility of assigning cases for trial. The court cannot, however, create the position of assignment commissioner, and then appoint the clerk of court to that position for additional compensation during his existing term as clerk. This would be a circumvention of Ohio Const. art. II, §20. See State ex rel. Mikus v. Roberts. In 1951 Op. No. 224, it was concluded that the clerk of courts could receive additional compensation during his term of office in the capacity of assignment

commissioner. This conclusion, however, should be considered in light of State ex rel. Mikus v. Roberts.

The duties of statistical clerk, typist, and stenographer could conceivably also be expected to be performed by the clerk of court. R.C. 1901.31(E), which sets out the duties of the clerk, states in part:

He [the clerk] shall file and safely keep all journals, records, books, and papers belonging or appertaining to the court, record its proceedings, and perform all other duties which the judges of the court may prescribe, and keep a book showing all receipts and disbursements, which shall be open for public inspection at all times.

The clerk shall prepare and maintain a general index, a docket, and such other records as the court, by rule, requires, all of which shall be the public records of the court.

The rest of division (E), and divisions (F) and (G) set out other duties of the clerk. I note, again, that the court may prescribe duties not statutorily specified. In fulfilling his duties, the clerk could conceivably be called upon to perform tasks ordinarily assigned to a statistical clerk, typist, or stenographer. The clerk has the ultimate responsibility of keeping the journals, records, books, and other papers of the court. If the clerk must type, for example, to fulfill that responsibility, then he must do so without expectation of additional compensation. A clerk of court is employed for the convenient and efficient exercise of a court's functions which are clerical in nature. State ex rel. McKean v. Graves, 91 Ohio St. 23, 109 N.E. 528 (1914). The duties of a court aide may be assigned to a clerk as duties he can be expected to perform in order to insure the convenient and efficient exercise of the court's clerical functions. As noted above, the court has the option of establishing the positions of statistical clerk, typist, and stenographer pursuant to R.C. 1901.33 and appointing someone other than the clerk to these positions. However, because the duties of these court aides fall within the scope of a clerk's responsibilities to assist the court, the court may not establish these positions, and then appoint the clerk as statistical clerk, typist, or stenographer for additional pay during his existing term as clerk. If the clerk is assigned the duties of these court aides, he must perform these duties as clerk, without an in-term increase in compensation. Of course, in territories where the local legislative authority has the power to set the clerk's compensation, see R.C. 1901.31(C), the legislative authority may wish to increase the clerk's compensation in light of the additional responsibilities imposed, such increase to be effective starting with the next term of office. However, because the clerk would receive such additional compensation in his capacity as clerk, rather than as assignment commissioner, statistical clerk, typist, or stenographer, R.C. 1901.31(C) would operate to prohibit his compensation from exceeding that of the clerk of courts of the county in which the municipal court is located.

In conclusion, it is my opinion, and you are advised, that:

1. Whether the positions of municipal court clerk and assignment commissioner, typist, stenographer, or statistical clerk are compatible is a factual determination, dependent upon the duties assigned to each position by the municipal court.
2. A municipal court clerk may not receive additional compensation for the performance of the duties of an assignment commissioner, typist, stenographer, or statistical clerk for the court, because the duties of these court aides fall within the scope of the office of clerk. (1951 Op. Att'y Gen. No. 224, p. 72 modified.)

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<sup>1</sup>As a point of information, the 114th General Assembly is currently considering Am. H.B. 121, which would eliminate the requirement that the compensation of the municipal court clerk not exceed that of the county clerk of courts.