

**OPINION NO. 67-033**

**Syllabus:**

The supervisory position of crew chief and superintendent of roads in the county engineering department is not incompatible with the position of councilman.

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**To: Robert O. Stout, Marion County Pros. Atty., Marion, Ohio**  
**By: William B. Saxbe, Attorney General, April 13, 1967**

I have before me your request for my opinion which reads in pertinent part:

"Could you please advise whether a supervisory position (crew chief and the superintendent of roads) in the county engineering department is compatible or incompatible with the position of councilman on the city council, the city being located within the county?

" \* \* \* \* \* " \* \* \* \* \* " \* \* \* \* "

Section 731.02, Revised Code, sets forth the qualifications required of a member of the legislative authority and reads in pertinent part as follows:

" \* \* \* Each member of the legislative authority \* \* \* shall not hold any other public office, \* \* \* and no such member may hold employment with said city. \* \* \* "

It would appear that the county position which you describe is not a public office. My conclusion is based on the fact that a public officer means generally an individual who takes an oath of office and is responsible to the public for his own official acts and those of his sub-

ordinates. In the instant situation the position of county engineer would be the public officer and the crew chief and superintendent of roads would merely be an employee or subordinate of the county engineer. Therefore, the first proviso of Section 731.02, supra, would not prohibit the crew chief from holding the position of councilman on city council.

There can be no doubt that the second proviso of Section 731.02, supra, does not apply. That is, a crew chief in the county engineering department cannot in any way be said to be an employee of the city.

On the basis of the above discussion there is no doubt that the positions in question are compatible under the statutory test of compatibility. However, there may be a possible conflict under the common law test of incompatibility. State ex rel. Attorney General v. Gebert, 12 CC (N.S.), 274. The common law test of incompatibility provides that:

"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 person to discharge the duties of both."

In the instant situation, the position of crew chief and superintendent of roads would not be subordinate to the position of councilman, nor would the position of councilman be subordinate to the position of crew chief and superintendent of roads. The crew chief and superintendent of roads is responsible to only the county engineer. It is assumed, for the purpose of this opinion, that the duties involved in both positions can be carried out by one person.

In conclusion, therefore, it is my opinion and you are hereby advised that the supervisory position of crew chief and superintendent of roads in the county engineering department is not incompatible with the position of councilman.