

commission of some offense against the state laws or local ordinances since such boy became eighteen years of age, the juvenile court has no jurisdiction in the punishment of such offense and the boy should be proceeded against in the same manner and in the same court as though he were an adult."

An examination of the General Code discloses that there is nothing in the sections relating to the Boys' Industrial School or in the other statutes which prohibit the *admission* of boys who are over eighteen years of age to such institution. The prohibition therein is against the *commitment* by the juvenile court when the minor is over eighteen years and not against the *admission* of such a minor to the Boys' Industrial School. That is to say, there is no provision of law, statutory or otherwise, to the effect that a minor duly committed to the Boys' Industrial School prior to his eighteenth birthday shall not be received at the school after he becomes eighteen, even though as above pointed out the juvenile court *can not* commit a boy over eighteen years of age to such institution.

In view of the foregoing and answering your question specifically, it is my opinion that the ruling made in Opinion No. 2201, Opinions of the Attorney General for 1925, page 63, applies equally to the Boys' Industrial School, and that a boy over eighteen years of age may be admitted to the Boys' Industrial School, when the juvenile court has duly committed him thereto prior to his eighteenth birthday, provided said order of commitment has not been rescinded or suspended, requiring further order of commitment after the boy's eighteenth birthday.

Respectfully,

EDWARD C. TURNER,
Attorney General.

689.

OFFICERS—COURT BAILIFF AND DEPUTY SHERIFF OR COUNTY PROBATION OFFICER OR BOTH ARE COMPATIBLE.

SYLLABUS:

A person acting under appointment as court bailiff may be appointed deputy sheriff or county probation officer or both, and he may be paid the compensation fixed for each one of the positions provided it is physically possible for him efficiently to perform the services necessary to fill the positions.

COLUMBUS, OHIO, July 6, 1927.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—I have before me your request for my opinion reading in part as follows:

"Mr. Blank was appointed Court Bailiff of the Common Pleas Court of Miami County, Ohio, and draws a salary as such from the County.

Mr. Blank was also appointed deputy sheriff by the sheriff with the approval of the Judge of the Common Pleas Court. As deputy sheriff he has been given charge of the probation department of the County and all the prisoners who are placed on probation are put in his charge. For his services in looking after the probationers he is to be given a salary of \$500.00 or more in addition to his salary as Court Bailiff.

Would you kindly advise me whether or not these two offices are incompatible and whether Mr. Blank can draw a salary as Court Bailiff and also an additional salary as deputy sheriff in charge of the persons placed on probation?"

From your statement it would appear that Mr. Blank is "given charge of the probation department of the county and all the prisoners who are placed on probation are put in his charge." It further appears that "for his services in looking after the probationers he is given a salary of \$500.00 or more in addition to his salary as court bailiff." It seems apparent, therefore, that Mr. Blank is actually performing the duties of a county probation officer. It does not appear whether or not he is to receive any compensation as deputy sheriff. The compensation provided is, as you say, for "looking after the probationers."

The two positions of deputy sheriff and county probation officer are entirely independent of each other. The appointment to each, the fixing of the compensation for each and the manner of paying that compensation are regulated by different statutes. Deputy sheriffs are appointed by the sheriff with the approval of a judge of the Court of Common Pleas (Section 2830, General Code). The compensation of such deputies is paid as provided by Section 2987, General Code, "from the appropriate county fund upon the warrant of the county auditor."

An examination of the various statutes pertaining to the duties of the sheriff and his deputies discloses that they are not charged with the duties coming under the jurisdiction of the county probation department, provision for which is made by Section 1554-1, General Code, which reads as follows:

"The judge of the court of common pleas of a county, or the judges of such court in joint session, if they deem advisable, may, with the concurrence of the board of county commissioners, establish a county department of probation. The establishment of such department shall be entered upon the journal of said court and the clerk thereof shall thereupon certify a copy of such order to each elective officer and board of the county. Such department shall consist of a chief probation officer, and such number of other probation officers and employes, clerks and stenographers, as may be fixed from time to time by the judge or judges. The judge or judges of the common pleas court of the county shall appoint to positions within the department, fix the salaries of appointees within the amount appropriated therefor by the board of county commissioners and supervise their work; provided that no person shall be appointed as probation officer who does not possess such training, experience and other qualifications as may be prescribed by the department of public welfare of the state. All positions within such department shall be in the classified service of the civil service of the county.

Probation officers shall, in addition to their respective salaries, receive their necessary and reasonable traveling and other expenses incurred in the performance of their duties. Such salaries and expenses shall be paid monthly from the county treasury in the manner provided by law for the payment of the compensation of other appointees of the judge or judges of the common pleas court."

From the provisions of the statute last above quoted it will be seen that the duties incident to a county probation department are to be performed by "a chief probation officer and such number of other probation officers and employes, clerks and stenographers as may be fixed from time to time by the judge or judges" of the Common Pleas Court. Such officers are appointed by the Common Pleas Judge and their salaries are fixed by him within the appropriation fixed by the county commissioners.

It is therefore apparent that the sheriff cannot appoint the probation officer and none of his deputies have a right to draw a salary as deputy sheriff for the performance of duties that come within the jurisdiction of an entirely separate department. The county probation department is as much separate from the office of sheriff as is the office of recorder, auditor or any other county officer. Before Mr. Blank could be paid a salary as probation officer, therefore, he must be appointed as such by the Common Pleas Court as provided by Section 1554-1.

However, as there is no constitutional or statutory inhibition against it there can be no objection to Mr. Blank holding any two or all of the positions of court bailiff, deputy sheriff and probation officer if such positions are not incompatible at common law. The general rule of incompatibility of offices is well stated in the opinion of Judge Dustin in the case of *State vs. Gerber*, 12 O. C. C. (N. S.) 274, 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 person to discharge the duties of both.”

This same rule would apply whether either one or any of the positions would technically be termed an office or not. Whether or not, in a case such as your inquiry covers, it is physically possible for one person to fill two or more of the positions at the same time is for the local authorities to determine, it being dependent on the amount of time required for the performance of the duties incident to the positions under consideration.

The question of the compatibility of the position of deputy sheriff and court constable was passed upon in the case of *State ex rel., Wolfe vs. Shaffer*, 6 O. N. P. (N. S.) 219, the headnotes reading:

“Neither the position of deputy sheriff nor court constable is a public office as that term is known to the law and the same person may hold both positions at the same time and lawfully receive the emoluments peculiar to each provided he is not paid twice for the same services.

A person holding appointment as deputy sheriff is not *ipso facto* required to present himself to the court in that capacity at the expense of the sheriff and the court may properly appoint him court constable these offices not being incompatible.”

The same conclusion was reached by this department in an opinion which may be found in the Annual Report of the Attorney General for 1911 and 1912 at page 322. To the same effect are two later opinions of the department found in the Annual Report of the Attorney General for 1913 at page 1439 and in Opinions of the Attorney General for 1921, Vol. I, page 317.

An examination of the statutes convinces me of the correctness of the conclusions set out in these several authorities, and while none of them have considered the question as it might apply to all three of the positions here involved, it is my judgment that the observations and reasoning of these authorities may be extended to include all three of the positions of deputy sheriff, court constable and probation officer.

Having reached the conclusion that the positions of deputy sheriff, court constable and probation officer are not incompatible I come now to a consideration of the question of compensation. The general rule applicable to situations of this kind is set out in Ruling Case Law, Vol. 22, page 535, as follows:

“In the absence of express or implied statutory provisions to the contrary an officer who holds two or more separate and distinct offices not incompatible with each other to each of which compensation is attached may

recover the compensation provided by law for each office. In the eyes of the law the same individual is two distinct officers and for this reason entitled to the compensation incident to each office."

The positions under consideration are, as they relate each to the other in so far as the duties to be performed by the incumbents are concerned, entirely independent of each other. The holder of one of the positions would not be required to perform any of the duties of any of the other positions unless he had been appointed thereto. In such cases it has been held in *State ex rel. Harrison vs. Lewis*, 10 O. D., 537, that:

"The provisions of Section 20, Article 2, of the Constitution, that the salary of a county official cannot be increased during his term of office, apply only to compensation for duties germane to his office or incidental or collateral thereto, and do not apply to services rendered in an independent employment to which he is appointed by an act of the state legislature."

See also *State ex rel. Taylor vs. Caughlin*, 18 O. D., 289.

To the same effect is the case of *State ex rel. Wolfe vs. Shaffer*, supra, which case was affirmed by the Circuit Court without report.

The opinion of the Attorney General of 1921 to which I have heretofore referred, provides in the syllabus that:

"The office and duties of a criminal court bailiff and those of a court constable are not incompatible and the same person may be appointed to discharge the duties of both offices, by the judge or judges of the common pleas court in counties having less than four judges, and may receive the salary for both positions, provided, however, that he is not paid twice for the same service."

The principle is recognized by the Supreme Court of the United States in the case of *United States vs. Saunders*, 120 U. S. 126, wherein it was held that the act of Congress prohibiting the allowance of additional pay or extra compensation to public officers has no application to the case of two distinct offices, places or employments each of which has its own duties and compensation, which offices may both be held by one person at the same time.

I am therefore of the opinion that a person acting under appointment as court bailiff may be appointed deputy sheriff or county probation officer, or both, and that he may be paid the compensation fixed for each one of the positions, provided it is physically possible for him efficiently to perform the services necessary to fill the positions.

Respectfully,
EDWARD C. TURNER,
Attorney General.

690.

BOARD OF EDUCATION—WITHOUT AUTHORITY TO PAY PHYSICIANS FOR TREATING PUPILS INJURED WHILE BEING TRANSPORTED TO AND FROM SCHOOL IN SCHOOL BUS.

SYLLABUS:

Boards of education are without authority to pay from public funds the expense of