

**OPINION NO. 80-073**

**Syllabus:**

1. A municipal court has no authority to appoint an administrator

who serves the entire court, although it may appoint an administrator for the small claims division of the court.

2. A municipal court has no authority to fix the compensation of an administrator of the small claims division of the court.
3. Whether the office of clerk of court and position of administrator of small claims court are incompatible is a factual determination, dependent on the duties assigned to both positions.
4. Pursuant to Ohio Const. art. II, §20, a clerk of court who is assigned the duties of administrator may not receive additional compensation for the performance of those duties.

**To: L. Craig Hollows, Miami County Pros. Atty., Troy, Ohio**  
**By: William J. Brown, Attorney General, November 12, 1980**

I have before me your request for an opinion concerning the following question:

May the Clerk of the Miami County Municipal Court, who has been appointed Court Administrator, receive additional compensation for services performed as Court Administrator, if his salary for the two offices would exceed that of the Clerk of Common Pleas Court, in light of Section 1901.31(C)?

I understand that judges of the municipal court have created the office of court administrator, and have appointed the clerk of court to that position. I also understand that the administrator serves the entire municipal court, including the small claims division.

You question the applicability of R.C. 1901.31, which defines the duties of the clerk of municipal court to include the performance of "all other duties which the judges of the municipal court may prescribe," and R.C. 2921.43(A)(1), which prohibits a public servant from soliciting or receiving "any compensation or fee, other than as allowed by law, to perform his official duties." You point out that there may also be issues concerning the court's authority to appoint an administrator and concerning the incompatibility of office of clerk and position of administrator.

Ohio Const. art. IV, §1 states:

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law. (Emphasis added.)

Exercising this grant of power, the legislature has created the various municipal courts throughout the state. See R.C. 1901.01. Pursuant to its power to create municipal courts, the legislature also has the authority to provide for their jurisdiction, maintenance, and employees, and has done so in R.C. Chapter 1901. See Ellis v. Urner, 125 Ohio St. 246, 181 N.E. 22 (1932), and cases cited therein; State ex rel. Ramey v. David, 119 Ohio St. 596, 165 N.E. 298 (1929); State ex rel. Huppert v. Sparma, 9 Ohio App. 2d 30, 222 N.E.2d 798 (Stark County 1966). The municipal courts, being creatures of statute, have only those powers which are conferred by statute. State ex rel. Finley v. Miller, 128 Ohio St. 442, 191 N.E. 465 (1934); Jacobenta v. Dunbar, 120 Ohio App. 249, 198 N.E.2d 674 (Cuyahoga County 1964). State statutes cannot be abridged by a rule of court. Van Ingen v. Berger, 82 Ohio St. 255, 92 N.E. 433 (1910).

The legislature has provided by statute for various employees of the municipal court. R.C. 1901.31 covers the election or appointment by the court of a clerk of court, and the appointment by each clerk of one or more deputy clerks and assistant clerks, as the judges deem necessary. R.C. 1901.32 provides for the appointment by the court of a bailiff and deputy bailiffs. Interpreters, psychiatrists, probation officers, assignment commissioners and their deputies, typists, stenographers, statistical clerks, and court reporters may be appointed by the court, pursuant to R.C. 1901.33. Services of prosecuting officers are provided under R.C. 1901.34. A clerk's compensation is set by statute. See R.C. 1901.31. The compensation of bailiffs and deputy bailiffs is set by the court. R.C. 1901.32. The legislative authority sets the compensation of assistant clerks, R.C. 1901.31, and those employees covered by R.C. 1901.33. With a few exceptions, prosecuting attorneys who prosecute state law violations in municipal court receive no additional compensation. The city law director and his assistants receive such compensation as the board of county commissioners prescribes. R.C. 1901.34. Clerks of court set their deputies' compensation. R.C. 1901.31(H).

No other specific court officer or employee is mentioned in R.C. Chapter 1901. (R.C. 1925.01, which provides for the employment of an administrator for the small claims division of the court, is discussed below as a special case.) However, R.C. 1901.36 states in part:

The legislative authority shall provide such other employees as are necessary, each of whom shall be paid such compensation out of the city treasury as the legislative authority prescribes or out of the treasury of Hamilton county as the board of county commissioners prescribes. (Emphasis added.)

(Pursuant to R.C. 1901.03(B), in Miami County and certain other counties, "legislative authority" has reference to the board of county commissioners and the "city treasury" has reference to the county treasury.) R.C. 1901.36 is said to be "geared to the discretion of the 'legislative authority,'" and the municipal courts are dependent "to a reasonable extent" upon the municipal legislative authority, with the limitation that the legislative authority has the duty to facilitate the administration of justice by the judiciary. State ex rel. Cleveland Municipal Court v. Cleveland City Council, 34 Ohio St.2d 120, 127, 296 N.E.2d 544, 550 (1973). Considering that the General Assembly has provided for specific court employees, and has stated that any other employees must be provided for by the local legislative authority, it is my opinion that the municipal court does not have the power to create the office of court administrator and make appointment to it. See 1957 Op. Att'y Gen. No. 188, p. 54. Rather, if there is to be a court administrator, the state legislature must specifically provide for the office by statute, or the local legislative authority must provide for the employment of such an official pursuant to R.C. 1901.36. Of course, once the position is created, the General Assembly or local legislative authority may, in its discretion, have the court appoint a person to be administrator.

The conclusion that a municipal court has no authority to appoint an administrator who serves the entire court is supported by R.C. 1925.01, which provides for the appointment of a court administrator in the small claims division of municipal and county courts, and R.C. 2301.12, which permits the appointment of an administrator for courts of common pleas. These sections demonstrate that if the General Assembly had intended to make provision for an administrator for the entire municipal court, it would have specifically done so. It may be inferred that, because the General Assembly explicitly enumerated certain officers and employees to be employed by the municipal court, while omitting reference in R.C. Chapter 1901 to the appointment of an administrator, the General Assembly did not intend municipal courts to employ administrators for the entire court, unless the local legislative authority so specified, pursuant to R.C. 1901.36. This inference is supported by the fact that the General Assembly has specifically provided for the appointment of a court administrator in other sections of the Revised Code.

It should be noted that R.C. 1901.14 states: "Municipal judges have further powers and duties as follows: . . . (C) To adopt, publish, and revise rules relating to

the administration of the court." While this section would empower the judges to set rules regulating such matters as docket control, case control and disposition, it is my opinion that it does not empower judges to hire employees, even administrative employees, especially considering the unambiguous terms of R.C. 1901.36, which grants the local legislative authority the power to "provide such other employees as are necessary."

As noted above, R.C. 1925.01 states: "(A) Each municipal and county court shall establish a small claims division. . . . (C) The court may appoint an administrative assistant who shall perform such duties as are assigned by the court." The bill which enacted R.C. 1925.01 was titled as follows: "To enact sections 1901.25 to 1925.16, inclusive, of the Revised Code to establish a division of small claims in municipal and county courts." 1967-1968 Ohio Laws 2638 (Am. Sub. H.B. 475, eff. Nov. 21, 1967). Every section in R.C. Chapter 1925 clearly relates to small claims courts. Thus, it is to be presumed that an administrative assistant appointed pursuant to R.C. 1925.01(C) would serve only the small claims division of municipal court. Because of the specific language of R.C. 1925.01, the judges of the municipal court clearly have the authority to appoint an administrator of the small claims division of this court.

However, it is my opinion that the court does not have the authority to fix the compensation for administrative assistants appointed pursuant to R.C. 1925.01(C). R.C. 1925.01(C), unlike the other sections providing for the employment of court employees, makes no reference to who shall prescribe compensation. Although the court appoints the administrative assistant, the power to appoint does not necessarily imply the power to set compensation. See, e.g., R.C. 1901.33. See State ex rel. Heeter v. Mullenhour, 51 Ohio St.2d 145, 364 N.E.2d 1382 (1977). See also Theobald v. State ex rel. Hall, 10 Ohio C.C. (n.s.) 175, 20 Ohio Cir. Dec. 414 (Montgomery County 1907), aff'd, 78 Ohio St. 426, 85 N.E. 1133 (1908). To supplement the language of R.C. 1925.01 as it applies to municipal courts, that section should be read in pari materia with R.C. 1901.36, the general statute concerning court employees and their compensation. It would appear that, in the absence of an express statute authorizing the court to prescribe compensation, it is the local legislative authority which has the power to do so, pursuant to R.C. 1901.36. State ex rel. Finley v. Miller and Jacobenta v. Dunbar, cited above, stand for the proposition that municipal courts, being creatures of statute, have only those powers which are conferred by statute. Municipal courts have not been specifically granted the authority to prescribe compensation for administrative assistants appointed pursuant to R.C. 1925.01(C). Such power must be seen to rest with the local legislative authority, pursuant to the general language of R.C. 1901.36.

Assuming that the municipal court chooses to have an administrative assistant for the small claims division of the court, and appoints the person who is the clerk of court to that position, your letter raises the issue of compatibility between the two positions. In 1979 Op. Att'y Gen. No. 79-111, I set out seven questions which must be considered in the analysis of the compatibility of two public positions. These questions are:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?

6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

Questions six and seven are of local concern, and I assume, for the purposes of this analysis, that both are answered in the negative. See Op. No. 79-III.

The prohibition contained in R.C. 124.57 is not applicable to this situation, and thus does not prevent a clerk from also being court administrator. See 1980 Op. No. 80-047 for a more detailed explanation of this question.

The second question must also be answered in the negative. R.C. 319.07 prohibits a clerk of court from holding the office of county auditor. However, no statutory provision prohibits a clerk from also serving as court administrator, and R.C. 1925.01, which creates the position of administrator of small claims court, does not prohibit the administrator from holding another office or position.

The third and fourth questions are derived from the common law test of compatibility set out in State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274, 21 Ohio Cir. Dec. 355 (Cir. Ct. Franklin County 1909). Question five is also a part of the common law test of compatibility. R.C. 1901.31(E), (F), and (G) set out the duties of a municipal court clerk. Division (E) includes the language: "He [the clerk] shall. . .perform all other duties which the judges of the court may prescribe. . . ." R.C. 1925.01(C) states: "The court may appoint an administrative assistant who shall perform such duties as are assigned by the court." Thus, the court is granted broad discretion in assigning duties to both the clerk and the administrator of the small claims division. If the court assigns duties to either the clerk or the administrator which would result in the subordination of one position to the other, or which would result in one position operating as a check upon the actions of the other, then the two positions would be incompatible. The resolution of this question appears to be an issue of fact, depending on the particular duties a court assigns to these positions. The answer might vary from court to court.

Whether there is a conflict of interest is also a factual determination, depending on what duties are assigned by the court. If a person is placed in a situation where the demands and loyalties of one position adversely affect or interfere with his performance in the second position, a conflict of interest exists, and the positions are incompatible. Op. No. 79-III.

Whether one person can physically discharge the duties of both positions is also a factual question, which can best be resolved by the parties involved. Consideration must be given to such factors as the time demands of each position. See Op. No. 79-III. Again, the duties assigned to each position must be examined in answering this question.

Assuming that the two positions are compatible, I turn to the portion of your letter which asks whether a clerk may also receive additional compensation for his services as administrator, if his salary for both offices would exceed that of the clerk of common pleas court. R.C. 1901.31(C) prohibits the compensation of the clerk of municipal court from exceeding that of the clerk of courts of the county in which the municipal court is located. There is authority for the proposition that where one person serves in different positions, he may receive compensation in both capacities, 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. Att'y Gen. No. 224, p. 72. But see 1965 Op. Att'y Gen. No. 65-150. Arguably, since the clerk is receiving compensation for each position, his salary as clerk would not exceed that of the common pleas court clerk in violation of R.C. 1901.31(C). However, I believe the clerk is prohibited from receiving compensation as administrator, in light of Ohio Const. art. II, §20, which reads:

The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.

This section has been held to apply to municipal court clerks. State ex rel. Edgcomb v. Rosen, 29 Ohio St.2d 114, 279 N.E.2d 870 (1972). It has been stated that if an officer is assigned new duties that are within the scope of his official duty or naturally incident or germane to his office, then art. II, §20 prohibits the officer from receiving additional compensation for the extra duties assigned. Only when new duties, not naturally incident to this office, are imposed, is an officer entitled to additional compensation, because he is considered to be invested with a new office. A person enters an office, to which a fixed salary is attached, with the understanding that he is to perform, at that same salary, not only those duties currently prescribed but all duties which may subsequently arise within the scope of that office. 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, 6 Ohio N.P. (n.s.) 101, 18 Ohio Dec. 289 (C.P. Ashtabula County 1907); 1972 Op. Att'y Gen. No. 72-121. In State ex rel. Mikus v. Roberts, 15 Ohio St. 2d 253, 239 N.E.2d 660 (1968), the court considered the question whether a county engineer could be appointed sanitary engineer, and receive salaries for both positions. Considering R.C. 315.14, which requires a county engineer to "perform such other duties as the board requires," and R.C. 6117.01, which empowers the board of commissioners to hire a sanitary engineer, the court held that the board had an option to employ another person as sanitary engineer or to assign the duties of sanitary engineer to the county engineer, but could not, in the absence of statutory authorization, grant additional compensation to the county engineer for those duties. The court noted that performance by the county engineer of the additional duties of sanitary engineer would have a tendency to require the employment of others to assist the county engineer, which otherwise would have been unnecessary. The court stated that, if additional compensation were provided to the engineer for those duties, the county and officer would be able to do indirectly what they are prohibited from doing directly by art. II, §20. The court also noted that one of the burdens of the office of county engineer is that additional duties may be imposed, including the duties of a sanitary engineer. See 1977 Op. Att'y Gen. No. 77-073; 1972 Op. Att'y Gen. No. 72-121; 1951 Op. Att'y Gen. No. 913, p. 723.

It is my opinion that the reasoning and conclusion of State ex rel. Mikus v. Roberts apply to the situation you raise. The court may choose to employ another person as small claims court administrator, or may, pursuant to its discretion under R.C. 1901.31, assign the duties of an administrator to the clerk. Examining those duties of a clerk specified in R.C. 1901.31, it cannot be said that additional administrative duties would be outside the scope of a clerk's office. They are germane and naturally incident to the duties a clerk may be expected to perform. Because of the prohibition of art. II, §20, a clerk of court may not receive additional compensation for duties imposed as court administrator.

In your letter you raise the issue of the applicability of R.C. 2921.43(A)(1). However, because I have concluded that a clerk may not receive additional compensation as administrator, it is unnecessary for me to consider this question.

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

1. A municipal court has no authority to appoint an administrator who serves the entire court, although it may appoint an administrator for the small claims division of the court.
2. A municipal court has no authority to fix the compensation of an administrator of the small claims division of the court.
3. Whether the office of clerk of court and position of

administrator of small claims court are incompatible is a factual determination, dependent on the duties assigned to both positions.

4. Pursuant to Ohio Const. art. II, §20, a clerk of court who is assigned the duties of administrator may not receive additional compensation for the performance of those duties.