

OPINION NO. 83-051**Syllabus:**

The bailiff of a municipal court which has county-wide jurisdiction may also serve as a township trustee within the same county.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 11, 1983

I have before me your request for my opinion concerning whether a bailiff of a municipal court, which has county-wide jurisdiction, may simultaneously serve as a township trustee within the same county.

R.C. 124.57, which prohibits employees in the classified service from engaging in political activity, does not apply to either of the positions at issue since neither position is a classified employment. See R.C. 124.11(A)(1) and (10); R.C. 505.01.

Neither the statutes governing a municipal court bailiff nor the statutes governing a township trustee prohibit the simultaneous holding of these positions, and I assume that there are no local provisions which would prohibit one person from serving in both capacities. I also assume that it is physically possible for one person to discharge the duties of both positions. See State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274 (Cir. Ct. Franklin County 1909); 1979 Op. Att'y Gen. No. 79-111.

I turn to the questions whether one position is subordinate to, or a check upon the other, and whether there is a possibility of a conflict of interest between the two positions. See State ex rel. Attorney General v. Gebert; Op. No. 79-111. This inquiry necessitates an examination of the duties required to be performed by a township trustee and municipal court bailiff. Township trustees are elected for four year terms, R.C. 505.01, and have various powers with regard to the township they serve. See, e.g., R.C. 505.10 (acceptance of property on behalf of the township; sale of township property); R.C. 505.17 (regulation of vehicle parking); R.C. 505.27 (collection and disposal of garbage); R.C. 505.37 (fire protection); R.C. 505.75 (adoption of a building code). A municipal court bailiff is appointed by the court, except in Hamilton County, where the clerk of court appoints the bailiff, although each judge may appoint a courtroom bailiff. R.C. 1901.32. Division (E) of R.C. 1901.32 reads:

The bailiff and deputy bailiffs shall perform for the court services similar to those performed by the sheriff for the court of common pleas, and shall perform such other duties as are requested by rule of court.

The bailiff or deputy bailiff may administer oaths to witnesses and jurors and receive verdicts in the same manner and form and to the same extent as the clerk or deputy clerks of the court. The bailiff may approve all undertakings and bonds given in actions of replevin and all redelivery bonds in attachments. (Footnote added.)

¹ See, e.g., R.C. 311.07(A) (each sheriff shall "execute all warrants, writs, and other process directed to him by any proper and lawful authority. . . . He shall attend upon the court of common pleas and the court of appeals during their sessions, and, when required, shall attend upon the probate court"); R.C. 311.08(A) ("[t]he sheriff shall. . . execute every summons, order, or other process directed to him by a proper and lawful authority. . . make return thereof, and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law"); R.C. 311.23 (sheriff may adjourn the court of common pleas if the judge is unable to attend). See also R.C. 2313.23 (drawings of jurors); R.C. Chapter 2327 (executions); R.C. Chapter 2329 (execution against property); R.C. Chapter 2331 (execution against the person); R.C. Chapter 2333 (proceedings in aid of execution).

From the foregoing, it is apparent that the duties of each position are performed independently of the other, and thus, neither position is subordinate to, or a check upon, the other.

There is one area in which the duties of a township trustee and municipal court bailiff overlap, thus presenting a possible conflict of interest. R.C. 1901.32(D) provides:

Every . . . police constable of a township within the territory of the [municipal] court is ex officio a deputy bailiff of the court in and for the . . . township within which he is commissioned as a . . . police constable, and shall perform such duties in respect to cases within his jurisdiction as are required of him by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation. In any township that is entirely within the territory of the court, the board of township trustees may appoint police constables, who shall receive such compensation out of the general funds of the township as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing their duties as public constables, and as ex officio deputy bailiffs of the court within the township.

Pursuant to R.C. 509.01, the board of township trustees has the power to appoint township constables, and to "pay each police constable, from the general funds of the township, such compensation as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing duties as a police constable." See R.C. 505.491-495 (removal of township constables). Thus, one person who served as both township trustee and municipal court bailiff would have certain power over police constables in each of those capacities.

Upon closer examination of the exact nature of this possible conflict, it becomes apparent that this fact does not render the positions of trustee and bailiff incompatible. In 1974 Op. Att'y Gen. No. 74-038, my predecessor noted that, pursuant to a board of township trustees' power to appoint and compensate township constables, the board had the implied power to direct and supervise the activities of constables, in order to efficiently meet the needs of the township. The board could, for example, set the duty hours of constables and designate their territorial assignments. See 1965 Op. Att'y Gen. No. 65-177. Op. No. 74-038 went on to state:

However, the trustees' implied authority may not be construed to restrict the exercise and performance of specific statutory powers and duties imposed directly on qualified constables. Many duties of constables are set out by statute and require no resolution or action by the township trustees beyond the original appointment of the constable. Sparling and Porter v. Todd, 27 Ohio St. [521] (1875) [the general duties of a constable are statutorily regulated]; R.C. 509.05; R.C. 509.10.

Thus, while a constable initially derives his position from the trustee's action, his authority is statutory, and in effect may at times exceed even that of the township trustees. . . .

It follows that beyond the board's power to coordinate activities of its constables a constable acts independently of the township trustees in the performance of certain statutorily prescribed duties and such performance may not be prohibited by the trustees. To allow a different construction would cause an absurd result in that a board of trustees could effectively by-pass the provisions of R.C. 505.491 et seq. [providing for the removal of constables] and suspend a constable by a resolution restricting his activity. A reasonable interpretation of a statute must be adopted wherever possible. . . .

I conclude, therefore, that while a board of township trustees has implied authority to coordinate the use of available constables to efficiently meet the needs of the township, and to supervise pursuant to R.C. 505.491 a constable's performance of his duties, such authority may not be construed to defeat the clear intent of the

legislature in directing the performance of certain duties by duly appointed and qualified constables. When a board of trustees feels that a constable is abusing his authority, R.C. 505.491, et seq., provides the proper course of action.

Id. at 2-167.

R.C. 509.05 sets forth a constable's duties as follows:

In addition to the county sheriff, constables shall be ministerial officers of the county court in all cases in their respective townships, and in criminal cases, they shall be such officers within the county. They shall apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within the county. They may execute all writs and process, in criminal cases, throughout the county in which they reside, and in which they were elected or appointed. If a person charged with the commission of a crime or offense flees from justice, any constable of the county wherein such crime or offense was committed shall pursue and arrest such fugitive in any other county of the state and convey him before the county court of the county where such crime or offense was committed.

Such constables shall serve and execute all warrants, writs, precepts, executions, and other process directed and delivered to them, and shall do all things pertaining to the office of constable.

The authority of a constable in serving any process, either civil or criminal, and in doing his duties generally shall extend throughout the county in which he is appointed, and in executing and serving process issued by a judge of the county court, he may exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted to a sheriff or coroner, under like process issued from courts of record.

See R.C. 509.07 (a constable must "make due return of all process directed and delivered to him"); R.C. 509.10 ("[e]ach constable shall apprehend, on view or warrant, and bring to justice, all felons, disturbers, and violators of the criminal laws of this state, and shall suppress all riots, affrays, and unlawful assemblies which come to his knowledge, and shall generally keep the peace in his township").

Thus, a board of township trustees has the power to appoint and remove township constables, as well as compensate constables. Accordingly, the board has the implied power to supervise constables. This power is, however, primarily administrative in nature and may not be used to impinge upon the statutory powers of township constables. Constables may perform their statutory duties independently of the board of trustees, subject to the board's power of removal. With regard to constables who have a certificate attesting to the satisfactory completion of an approved training program, this power of removal may be exercised only in cases of misconduct, and only after charges have been preferred and a hearing held. R.C. 505.491-495; R.C. 509.01. The trustees' power of removal is broader with regard to constables who have no such certificate (those appointed prior to 1966, see R.C. 109.77), who serve at the pleasure of the board. R.C. 509.01. See Op. No. 74-038; 1970 Op. Att'y Gen. No. 70-032.

The bailiff of a municipal court has no power to appoint or remove constables. The bailiff's authority over a constable is limited to the assignment of duties on behalf of the municipal court, which are similar to the duties performed by a constable on behalf of a county court pursuant to R.C. Chapter 509.

The only point of conflict which I perceive between a trustee and bailiff with regard to constables is that, if the township is entirely within the territory of the court, constables are entitled to such payment as the township trustees prescribe for services actually rendered as deputy bailiffs. Thus, it is possible that if one person served as bailiff and trustee, he could be influenced by township budgetary concerns in assigning tasks to the constables in his capacity as bailiff. If the

township is not entirely within the territory of the court, constables receive no additional compensation for serving as deputy bailiffs. However, it is possible that a person who served as both bailiff and trustee would, in his capacity as bailiff, be hesitant to assign duties to constables acting as deputy bailiffs, if he believed that such assignments would impose financial burdens on the township. For example, the imposition of duties on the township constables as deputy bailiffs could necessitate the hiring of additional constables to adequately serve the needs of the township. These possibilities of conflict appear, however, to be speculative in nature, and thus do not render the positions incompatible. See 1979 Op. Att'y Gen. No. 79-112; Op. No. 79-111; 1959 Op. Att'y Gen. No. 1031, p. 708, 710 ("the mere fact that an officer holding two positions might do an act in connection with one of these positions which, if done, would indicate a divided loyalty toward his duty in the other position, is not sufficient to declare the offices incompatible"). Constables do not serve as deputy bailiffs at the discretion of the township trustees or the bailiff. Duties which are typically performed by the constables, such as the service of process and the execution of writs and warrants, are necessary court functions, which must be carried out. In addition, the judges, clerk and deputy bailiffs may assign duties to the constables, and thus act to ensure that the necessary services are performed. See 1981 Op. Att'y Gen. No. 81-087 (a township clerk's duty to administer oaths and certify affidavits is permissive in nature, and could be performed by a notary public; thus, the clerk may withdraw from the conflict presented by this function without neglecting a statutory duty and without causing great hardship).

In conclusion, it is my opinion, and you are advised, that the bailiff of a municipal court which has county-wide jurisdiction may also serve as a township trustee within the same county.