

OPINION NO. 70-170

Syllabus:

The nature of the positions of municipal police officer and secret service officer of the prosecuting attorney's office are compatible.

To: Thomas R. Spellerburg, Seneca County Pros. Atty., Tiffin, Ohio
By: Paul W. Brown, Attorney General, December 23, 1970

I have before me your request for my opinion as to whether the position of a municipal police officer is compatible with that of a secret service officer of a prosecuting attorney's office. Since there are no past opinions on the compatibility of these two positions, it is necessary to consider them in light of the rule set forth in State, ex rel. Attorney General, v. Gebert, 12 Ohio C.C.R. 274, which held 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 addition, the following test is suggested in 42 Am. Jur. 935:

"* * *Incompatibility of offices exists where there is a conflict in the duties of the officers, so that the performance of the duties of the one interferes with the performance of the duties of the other."

The duties of the secret service officer of a prose-

cutting attorney's office are set forth in Section 309.07, Revised Code, which provides in part that:

"The prosecuting attorney may appoint secret service officers whose duty it shall be to aid him in the collection and discovery of evidence to be used in the trial of criminal cases and matters of a criminal nature. * * *"

A city police officer is a classified employee whose powers and duties are established by Section 737.11, Revised Code, which provides in part as follows:

"The police force of a municipal corporation shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority thereof, and all criminal laws of the state and the United States * * *."

In considering these two positions it is important to understand that a secret service officer is an employee of the prosecuting attorney. His duties are narrowly limited to investigation, and his discretion in this area is restricted by the fact that the prosecuting attorney may remove him from any case in which his job as a municipal policeman might be in conflict with his job as an investigator. The prosecutor's flexibility in such a situation is assured by his authority under Section 309.07, *supra*, to appoint more than one secret service officer. For the same reason, holding a position as a secret service officer would not, in itself, interfere with a policeman's performance of his duties. In addition, under Section 737.06, Revised Code, the chief of police has control over the assignments of municipal policemen. Therefore, a policeman may be removed from any assignment where his other job might interfere with his performance as a policeman. Consequently, it becomes clear that these two positions do not by their nature give rise to a conflict, and are therefore compatible. The question of whether it is physically impossible for one person to discharge the duties of both is a question of fact relating to the respective demands of each employer on the time and the availability of the employee for his services.

Therefore, it is my opinion and you are hereby advised that the nature of the positions of municipal police officer and secret service officer of the prosecuting attorney's office are compatible.