

We think the compensation in the case at bar comes within the principle of the case cited, although a per diem compensation. It is not, within the meaning of the section quoted, 'salary'. Hence, an increase in the pay of a member during his term, is not prohibited by the constitution."

In the case of *Theobald vs. State* 10 O. C. C. (N. S.) 175 it was held that a change from the fee system to salary was not a violation of Article II, Section 20 of the Constitution of Ohio, citing as authority therefor the case of *Gobrecht vs. Cincinnati*, supra, and the case of *Thompson vs. Phillips*, 12 O. S. 617.

The statement filed by a coroner on the first Monday of September of his first year in office would of course not show any fees collected previous to the first Monday of the preceding January for the reason that he had not collected any fees prior to that time. A coroner upon retiring from office should file a statement showing the amount of fees collected between the preceding first Monday in September and the time he retired from office although the statute does not specifically require him to do so.

House Bill No. 485, supra, became effective August 1, 1927. The salaries and compensation of coroners then in office for the period following August 1, 1927, should be computed and allowed and paid on the basis of the ratio the time from August 1, 1927, to the first Monday in January, 1928, bears to a calendar year.

Specifically answering your question, I am of the opinion that :

First, the per annum compensation provided for a county coroner by the provisions of House Bill No. 485, passed by the 87th General Assembly, should be allowed and paid for each official year or part thereof of his term of office.

Second, the year referred to in Section 2856-5a, General Code, being the year next preceding the first Monday of September of each calendar year is not the period of time for which a maximum and minimum compensation allowed to coroners in counties of less than 400,000 population should be computed.

Third, coroners in office on the first Monday of September, 1927, should make a report as of said date of all fees collected by them during that part of the year next preceding the said first Monday of September, 1927, that follows the effective date of House Bill No. 485, to-wit, from August 1, 1927, to the first Monday in September, 1927.

Fourth, coroners in office at the time of the effective date of House Bill No. 485, to-wit, on August 1, 1927, are subject to the provisions of said act.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1058.

OFFICES—JUSTICE OF PEACE AND MEMBER OF BOARD OF EDUCATION OF RURAL SCHOOL DISTRICT COMPATIBLE—CLERK OF SUCH BOARD AND JUSTICE OF PEACE COMPATIBLE.

*SYLLABUS:*

1. *A justice of the peace may also hold the office of member of the board of education of the rural school district in which he resides*

2. *A justice of the peace may also be clerk of the board of education of the rural school district in which he resides.*

COLUMBUS, OHIO, September 26, 1927.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“Mr. M. of Union Township, Auglaize County, Ohio, is the duly elected, qualified and acting justice of the peace of said township. He is a resident of Union Township, and that part of Union Township in which he resides is attached to Clay Township, Auglaize County, Ohio, and a part of Clay Township School District.

He has been acting as clerk of the board of education of Clay Township, for some time past, and it is now contemplated to appoint him a member of the board of education of Clay Township, Auglaize County, Ohio, to fill a vacancy occurring on said board.

In view of the fact that that portion of Union Township in which Mr. M. resides is a part of the Clay Township School District, is there any legal obstacle that will prevent Mr. M. from holding both the office of member of the board of education of Clay Township, and justice of the peace of Union Township?

Further, is there any legal obstacle that would prevent him from acting as clerk of the Clay Township Board of Education, and at the same time retain his office as justice of the peace of Union Township, Auglaize County, Ohio?”

The general rule of law with respect to compatible and incompatible offices as stated in 29 Cyc. 1381 is as follows:

“It may be laid down as a rule of the common law that the holding of one office does not in and of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But at common law two offices whose functions are inconsistent are regarded as incompatible. The inconsistency which at common law makes offices incompatible does not consist in the physical impossibility to discharge the duties of both offices; but rather is a conflict of interest, as where the incumbent of one office has the power to remove the incumbent of another, or to audit the accounts of another or to exercise a supervision over another as in the case of a judicial officer and his subordinate ministerial officer.”

The rule as stated in the case of *State ex rel. vs. Gebert*, 12 O. C. C. (N. S.) 275 is 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.”

You state in your letter that it is now contemplated to appoint Mr. M., who is a justice of the peace, in and for Union Township, Auglaize County, a member of the “Board of Education of Clay Township.” By the terms of Section 4679, General Code,

"The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts."

For the purpose of this opinion it will be assumed that you refer to appointment as a member of the board of education of a rural school district.

Section 4747, General Code, provides :

"The board of education of each city, exempted village, rural and village school district shall organize on the first Monday of January after the election of members of such board. One member of the board shall be elected president, one as vice-president and a person who may or may not be a member of the board shall be elected clerk. The president and vice-president shall serve for a term of one year and the clerk for a term not to exceed two years. The board shall fix the time of holding its regular meeting."

Section 4749, General Code, provides :

"The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state."

By the terms of Section 4750, General Code :

"The board of education shall make such rules and regulations as it deems necessary for its government and the government of its employees and the pupils of the schools."

I have examined the statutes pertaining to the offices of justice of the peace and members of a board of education of a rural school district and find no statutory inhibition against one person holding both offices. These offices are not subordinate the one to the other or in any way a check upon the other. It is not physically impossible for one person to discharge the duties of both.

In this connection your attention is directed to a former opinion of this department which is somewhat analogous to the question you present and which appears in Vol. I, Opinions, Attorney General, 1918, page 924, the syllabus of which reads :

"The mayor of a village may also hold the office of member of the board of education for a district which includes the village of which he is mayor."

With reference to the compatibility of the office of justice of the peace and the position of clerk of a board of education, it should first be noted that it was held by the Supreme Court of Ohio in the case of *Board of Education vs. Featherstone*, 110 O. S. 669, that "the election of the defendant in error by the board of education \* \* \* as clerk of the board, did not confer upon him any function of sovereignty or constitute him an officer within the prohibition of Section 20, Article II, of the Constitution of Ohio." Obviously if the office of justice of the peace be compatible

with the office of member of a board of education, the office of justice of the peace would be compatible with the mere employment as clerk of the board.

In view of the foregoing and answering your questions specifically it is my opinion that :

1. A justice of the peace may also hold the office of a member of the board of education of a rural school district in the district in which he resides.
2. A justice of the peace may be employed as clerk of the board of education of a rural school district for the district in which he resides.

Respectfully;  
EDWARD C. TURNER.  
*Attorney General.*

1059.

APPROVAL, 12 GAME REFUGE LEASES, DISAPPROVAL, 3 GAME REFUGE LEASES.

COLUMBUS, OHIO, September 26, 1927.

*Department of Agriculture, Division of Fish and Game, Columbus, Ohio.*

GENTLEMEN:—I have your letter of recent date in which you enclose the following Game Refuge Leases, in duplicate, for my approval :

<i>No.</i>	<i>Name</i>	<i>Acres</i>
922	C. C. Danford, Monroe County, Franklin Township-----	180
933	Tillie Danford, et al., Monroe County, Franklin Township-----	70
934	Wm. H. Daper, et al., Monroe County, Franklin Township-----	83
992	Anne L. Nelson, Madison County, Monroe Township-----	260
993	Edward Hammond, Henry County, Napoleon Township-----	80
996	Edna J. Cuff, Henry County, Napoleon Township-----	100
997	H. E. Long, Medina County, Litchfield Township-----	112
998	B. R. Turner, Medina County, Litchfield Township-----	72
999	Frank Rising, Medina County, Litchfield Township-----	55
1000	A. C. Barth, Medina County, Litchfield Township-----	98
1001	Vac Sic, Medina County, Litchfield Township-----	75
1002	Mamie Stranahan, Medina County, Litchfield Township-----	160

I have examined said leases, find them correct as to form, and I am therefore returning the same with my approval endorsed thereon.

I am returning herewith lease No. 994, Adam Bach, et al., Monroe County, Summit Township, 80 acres, unapproved, for the reason that the acknowledgment is defective in that the name Adem Baugh appears therein and there is nothing to show that such person is one and the same as Adam Bach, the lessor.

I am returning herewith Lease No. 995, Cleveland Worsted Mills, Portage County, Ravenna Township, 1000 acres, unapproved, for the reason that proper evidence should be submitted to this department in the form of a certificate signed by the Secretary of the Company or otherwise to the effect that George H. Hodgson, Vice-President of the Cleveland Worsted Mills Company, was authorized to execute the lease in question.