

575.

## OFFICES INCOMPATIBLE—PROSECUTING ATTORNEY AND CHIEF PROBATION OFFICER.

## SYLLABUS:

*A prosecuting attorney may not legally be appointed as chief probation officer so long as he is serving in the capacity of prosecutor.*

COLUMBUS, OHIO, June 29, 1929..

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“I submit the following inquiry for your opinion:

Under the provisions of General Code 1554-1 for the establishment of a county department of probation, may the Court of Common Pleas and the county commissioners appoint the prosecuting attorney as chief probation officer?

If said prosecuting attorney is duly appointed to act as probation officer, may he be paid compensation for said office in addition to the salary he receives from the county as prosecuting attorney?”

Section 1554-1 of the General Code, to which you refer, authorizes the establishment by the judge or judges of the Common Pleas Court, with the concurrence of the board of county commissioners, of a department of probation. Said section provides that such department shall consist of a chief probation officer and such other probation officers and employes as may be fixed from time to time by the judge or judges.

Without further consideration of the provisions of Section 1554-1 and its related sections, suffice it to say that said section contains the following language:

“All positions within such department shall be in the classified service of the civil service of the county.”

In my opinion No. 544, rendered under date of June 19, 1929, to the Bureau of Inspection and Supervision of Public Offices, it was held, as disclosed by the syllabus:

“A member of the city police department who is in the classified civil service may not legally hold the office of a member of the city board of health at the same time, without violating the provisions of Section 486-23, General Code, which prohibit any officer or employe in the classified civil service from taking part in politics other than voting as he pleases and expressing freely his political opinions.”

In my said opinion reference was made to an opinion of my immediate predecessor, found in Opinions of the Attorney General for 1928, Vol. II, page 1119, in which it was held:

“A person in the classified civil service of the state cannot be a candidate for the office of village councilman or hold said office by election or appointment without violating the provisions of Section 486-23, General Code.”

Said opinion above referred to clearly holds that one may not hold a public office, whether elective or appointive, and at the same time be in the classified civil service of the state or county.

In view of the foregoing, it is unnecessary to consider the relative duties of the chief probation officer and the prosecuting attorney, in view of the general rule with reference to incompatibility. The former opinions seem to be dispositive of the question.

You are therefore specifically advised that a prosecuting attorney may not legally be appointed as chief probation officer so long as he is serving in the capacity of prosecutor.

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576.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
JEFFERSON COUNTY.

COLUMBUS, OHIO, June 29, 1929..

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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577.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
CUYAHOGA COUNTY.

COLUMBUS, OHIO, June 29, 1929..

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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578.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
UNION COUNTY.

COLUMBUS, OHIO, June 29, 1929..

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*