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COMPATIBILITY — PROBATE AND JUVENILE JUDGE —  
COUNTY COURT JUDGE—INCOMPATIBLE.

## SYLLABUS:

The office of Probate and Juvenile Judge is incompatible with the office of County Court Judge.

Columbus, Ohio, August 1, 1957

Hon. Tom Richards, Prosecuting Attorney  
Carroll County, Carrollton, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Is the office of Probate and Juvenile Judge compatible with that of County Court Judge created by Sections 1907.011, et seq. of the Revised Code? In the event said offices are compatible, does the limitation on the salary of the Probate and Juvenile Judge defined in Section 2151.11 of the Revised Code, or any other limitation prevent such Judge from receiving compensation provided for a County Court Judge?”

The test of incompatibility of public offices most commonly applied in Ohio is that stated in State *ex rel*, Attorney General vs. Gebert, 12 C. C. (N. S.) 274, 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.”

Section 1907.301 of the Revised Code reads as follows :

“County court judges shall receive from constables all moneys collected by such constables, except moneys paid to the party entitled thereto before the return of execution. Moneys so received by judges, or otherwise collected, with or without process, in such judges’ official capacity, for the use of any person, must be paid by such judges to such person or his agent, on demand. If a judge fails to pay over moneys received by him to the person entitled thereto, or to such person’s agent, as provided in this section, when such moneys are demanded of such judge at his office or residence, on motion in the probate court, and five days’ notice thereof in writing, such judge shall be amerced in the amount of such moneys with ten per cent thereon, to and for the use of the party entitled thereto. Such amercement shall be entered on the record of the court, and have the same effect as a judgment, from which there can be no appeal.”

The provisions of the above cited statute place the Probate Judge in position to render a finding with regard to the fees collected by the County Court. Such position clearly makes the Probate Court a check upon the County Court.

Section 3.11 of the Revised Code reads as follows :

“No person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, probate judge, and justice of the peace.”

It is noteworthy that the General Assembly did not choose to amend the above cited Section. Conceivably, it could be urged that the County Court, as the replacement for the Justice of the Peace Court, is encompassed within the purview of Section 3.11, Revised Code. In view of the position of the Probate Court as a check upon the County Court, however, this question need not be answered.

Accordingly, in specific answer to your inquiry, it is my opinion that the office of Probate and Juvenile Judge is incompatible with the office of County Court Judge. This incompatibility negates the inquiry regarding

the salary limitation of the Probate and Juvenile Judge defined in Section 2151.11 of the Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General