

Note from the Attorney General's Office:

1962 Op. Att'y Gen. No. 62-3235 was questioned by
1979 Op. Att'y Gen. No. 79-111.

3235

DEPUTY CLERK OF COURT OF COMMON PLEAS IS INCOMPATIBLE WITH THE POSITION OF CLERK OF THE COMMISSIONERS OF JURORS OF THE COUNTY—§§2303.05, R.C., 2313.02, R.C., 2313.23, R.C.

SYLLABUS:

The position of deputy clerk of the court of common pleas appointed under Section 2303.05, Revised Code, is incompatible with the position of clerk of the commissioners of jurors of the county, appointed under Section 2313.02, Revised Code.

Columbus, Ohio, August 29, 1962

Hon. William H. Conner, Prosecuting Attorney
Hardin County, Kenton, Ohio

Dear Sir:

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

“I am writing you to request a ruling on the compatibility of a Deputy Clerk of Courts also holding a position of Clerk to a two man jury commission.”

The statutes of this state contain neither a specific prohibition against the same person holding the two positions about which you ask nor a specific declaration that the positions are incompatible. Your question must be answered then under the common law rules of compatibility of offices. These were long ago set out in *State ex rel. Attorney General v. Gebert*, 12 C. C. (N.S.), 274 at 275, 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.”

The office of clerk of the common pleas court is covered by Chapter 2303., Revised Code. Authority for the appointment of deputy clerks is contained in Section 2303.05, Revised Code, which provides :

“The clerk of the court of common pleas may appoint one or more deputies. Such appointment or appointments shall be in writing signed by the clerk and entered on the Journal of the court.”

I find nothing in this section or in the remainder of Chapter 2303, which indicates that a deputy clerk of courts is either “subordinate to” “in any way a check upon” the clerk of a jury commission.

Provisions relating to jury commissions appear in Chapter 2313., Revised Code; and Section 2313.02, Revised Code, specifically provides for the appointment of jury commission clerks, reading in part :

“* * * The commissioners may, with the consent of said court expressed in writing, from time to time appoint such clerks and messengers as are necessary. The compensation of such clerks and messengers shall be fixed by the said court, and paid monthly by the county. All appointments made under this section shall be filed in the office of the clerk of the court of common pleas and entered on the journal of the court. All such appointment of deputies, clerks, and messengers shall be made on the basis of ascertained merit and fitness alone, in accordance with rules prescribed by the said court.”

Section 2313.21, Revised Code, provides for the conducting of the drawing of jurors. Under that section one of the jury commissioners mixes the ballots in the jury wheel and draws ballots.

Section 2313.23, Revised Code, provides in part :

“* * * A commissioner, the sheriff of the county, in person or by his deputy, and a judge of the court of common pleas, to-

gether with the clerk of the court of common pleas, or his deputy, shall attend at the office of the commissioners to witness and assist in the drawing of jurors for the term.”

Under Section 2313.23, *supra*, a deputy clerk of courts might be designated to witness and assist in the drawing of jurors. If such deputy clerk were also a clerk for the jury commission, he would thus be witnessing the action of his employers, and his actions as a witness might very well be influenced by this fact. Accordingly, a conflict of interest would exist which, under the rule of Gebert, *supra*, would render the positions in question incompatible. Of course, it is not certain that the deputy clerk would be given the duty of witnessing the drawing of jurors, however, the possibility that this might occur is sufficient to cause the positions to be incompatible.

Accordingly, it is my opinion and you are advised that the position of deputy clerk of the court of common pleas appointed under Section 2303.05, Revised Code, is incompatible with the position of clerk of the commissioners of jurors of the county, appointed under Section 2313.02, Revised Code.

Respectfully,
MARK McELROY
Attorney General