

Note from the Attorney General's Office:

1961 Op. Att'y Gen. No. 61-2311 was distinguished by
2014 Op. Att'y Gen. No. 2014-032.

2311

ONE PERSON MAY NOT SIMULTANEOUSLY SERVE AS A DEPUTY SHERIFF AND MEMBER OF A BOARD OF TOWNSHIP TRUSTEES IN A COUNTY—§§505.441, 311.05, R.C.

SYLLABUS:

One person may not simultaneously serve as a member of a board of township trustees and as a deputy sheriff in the same county.

Columbus, Ohio, June 27, 1961

Hon. Thomas L. Tribbie, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir :

Your request for my opinion reads as follows:

"I have been requested by the Commissioners of Guernsey County, Ohio to obtain your opinion on the compatibility of the office of Township Trustee and Deputy Sheriff in the same county.

"In reviewing former opinions of the Attorney General, I do not find that this matter has been questioned."

There are no statutory inhibitions upon the same person holding the office of township trustee and deputy sheriff simultaneously. It remains to be determined, therefore, whether or not the two offices are compatible at common law. The common law rule of incompatibility as stated in the case of *State, ex rel., Attorney General v. Gebert*, 12 C. C. (N.S.) 274, 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."

It therefore becomes necessary to determine whether or not either one of the offices in question is subordinate to, or a check upon, the other, that is whether or not the same person can, if occupying both, exercise independent judgment in connection with the discharge of the duties thereof, and also whether it is physically possible for one person to discharge the duties of both offices.

The duties of deputy sheriff are in effect those duties prescribed by statute to be performed by the county sheriff. The deputy is an agent of the sheriff, and, further, Section 311.05, Revised Code, states "The sheriff shall be responsible for the neglect of duty or misconduct in office of each of his deputies."

Upon examination of the statutes setting forth the duties of the office of township trustee I find authority placed in a trustee in Section 505.441, Revised Code, which could make independent judgment difficult for one who simultaneously holds the position of township trustee and deputy sheriff.

Section 505.441, *supra*, reads in part as follows:

"In order to obtain police protection, or to obtain additional police protection in times of emergency, any township may enter into a contract with one or more townships, municipal corporations, or county sheriffs upon such terms as are agreed to by them, for services of police departments or use of police equipment, or the interchange of the service of police departments or use of police

equipment within the several territories of the contracting subdivisions, if such contract is first authorized by respective boards of township trustees or other legislative bodies.

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Since it could be difficult for a township trustee to exercise independent judgment when contracting with the county sheriff to obtain police protection for the township which he serves, if at the same time such trustee is a deputy sheriff, I conclude that a conflict of interest exists between the two positions.

Accordingly, it is my opinion and you are advised that one person may not simultaneously serve as a member of a board of township trustees and as a deputy sheriff in the same county.

Respectfully,
MARK McELROY
Attorney General