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SOLDIERS' AND SAILORS' RELIEF COMMISSION—COUNTY
—SECTION 2930' G.C.—OFFICE OF MEMBER NOT INCOMPAT-
IBLE WITH OFFICE OR EMPLOYMENT, CLERK IN OFFICE,
COUNTY ENGINEER—APPOINTED UNDER SECTION 2981 G.C.

SYLLABUS:

The office of member of a county soldiers' and sailors' relief commission, created under authority of Section 2930, General Code, is not incompatible with the office, or employment, of clerk in the office of county engineer, appointed under authority of Section 2981, General Code.

Columbus, Ohio, May 8, 1952

Hon. Joel S. Rhinefort, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Will you kindly give us your opinion as to whether the office of Member of the County Soldiers and Sailors Relief Commission and Clerk in the office of the County Engineer are compatible.”

There are, of course, no constitutional or statutory provisions in Ohio relative to incompatibility of public offices generally, 32 Ohio Jurisprudence, 906, Section 46. Moreover, I find no express or implied provision as to the incompatibility of the two offices in the instant case in any of the special statutes relating to them. In this situation resort must be had to the common-law rule on the subject. This rule is stated in 32 Ohio Jurisprudence, 909, Section 48, as follows:

“* * * One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other,—as an officer who presents his personal account for audit and at the same time is the officer who passes upon it,—or is in any way a check upon the other, or where contrariety and antagonism would result in an attempt by one person to discharge the duties of both.”

Further, in *State ex rel. Attorney General v. Gebert*, 12 C.C. (N.S.) 274, it is held that "Offices are considered incompatible * * * when it is physically impossible for one person to discharge the duties of both."

With these rules in mind, we may proceed to examine certain of the duties and functions of the two officers here involved. Certain of the statutory provisions relative to members of a soldiers' relief commission are as follows:

Section 2930, General Code:

"There shall be a commission known and designated as 'the soldiers' relief commission,' in each county, composed of five persons, residents of the county, appointed by a judge of the common pleas court, each of whom shall serve for five years, and wherever possible one member of said commission shall be a member of the United Spanish War Veterans; one a member of the American Legion; one a member of the Veterans of Foreign Wars; one a member of the Disabled American Veterans and an honorably discharged or honorably separated veteran of world war II. Upon taking effect of this act one member shall be appointed for a term of one year; one member shall be appointed for a term of two years; one member shall be appointed for a term of three years; one member shall be appointed for a term of four years and one member shall be appointed for a term of five years. Thereafter, as their respective terms expire, one member shall be appointed each year for a term of five years.

"Provided, however, that upon the expiration of the term of the honorably discharged veteran of world war II, wherever possible, the fifth member of such commission to be appointed shall be a member of the American Veterans of world war II, AMVETS."

Section 2932, General Code:

"On the presentation of an itemized statement thereof, the county commissioners shall allow the persons composing the soldiers' relief commission, their actual expenses incurred in the performance of their duties, and a fair compensation for their services. The county auditor shall issue his warrant upon the county treasurer for the amount so allowed."

Section 2937, General Code:

"On the fourth Monday of November of each year and at such other times as may be necessary, the soldiers' relief commission shall meet at the office of the county commissioners, or in a suitable room furnished by the county for that purpose, and examine

carefully the lists and statements of those reported by the township and ward soldiers' relief committees, and also all cases not included in such lists, who, before and during their session, have been recommended to the commission for aid under these provisions. If satisfied that those so recommended, or any of them are in need of assistance and are entitled thereto under these provisions, the commission shall fix the amount to be paid each month in each case to such person or family."

From an examination of the foregoing statutory language it is clear that the General Assembly entertained no intention to make membership on this commission an office to which the incumbent was expected to devote his full time and attention, and we must conclude, therefore, that it would be physically possible for such incumbent to pursue some other vocation, or attend the duties of some other office, during the period of his incumbency.

Moreover, I perceive nothing in this language indicating this office to be either subordinate to, or placed in a position of authority over, the office of county engineer. A fortiori, this must be deemed true also as to the office, or employment, of clerk in such engineer's office.

The employment of deputies, assistants, clerks, etc., by the county engineer is authorized by Section 2981, General Code, which reads:

"Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties. Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office."

Although Section 7181, General Code, requires that, in counties having a population of over 30,000 the engineer "shall give his entire time and attention to the duties of his office," I find no such provision as to his deputies or other assistants. A somewhat similar question was under

consideration in Opinion No. 490, Opinions of the Attorney General for 1927, p. 807, where the writer, after noting a restriction similar to that above set out with respect to the engineer, p. 809, said:

“I find no provision of law that requires any of the deputies or other employes of the county surveyor to give their entire time and attention to the duties of the office. This is a matter for the county surveyor to determine. If he finds that it is not necessary to employ his deputies, or any one of them, for full time, such arrangements can be made and such fact be taken into consideration in the fixing of the deputies' compensation. If the county surveyor does not require his deputy to devote his entire time to the duties of his office, when not on duty as such deputy, the deputy may do any other work that is not inconsistent with his employment by the county; and if the deputy wishes to work for a city, when such work is not connected with the duties required of the county surveyor, there is no law which would prevent him from so doing.”

I concur in the conclusion thus stated and conclude that we are not concerned in the case at hand with the question of the physical impossibility of discharging the duties of the two offices involved.

On the question of the duties required of the engineer being such as to subordinate his office to, or place it in a position of authority over, that of member of a soldiers' relief commission, a brief reference to such duties are in order. In this connection we may assume, without so deciding, that any inhibition in this respect which is found applicable to the engineer would likewise be applicable to a clerk appointed by him.

Any examination in detail of the numerous statutes relating to the duties of the county engineer is hardly practicable in this discussion nor does it appear that any useful purpose could be served thereby. It is sufficient only to note that the duties imposed by statute on a county engineer relate entirely to services within the field of civil engineering rendered to the county and certain of the local political subdivisions therein. Such services relate almost entirely to public improvements such as roads, bridges, and drainage projects. None of these services relates in any way that I can ascertain to the purely charitable functions with which the members of a soldiers' relief commissions are concerned, nor, indeed, am I able to find any point of contact at all between these two offices in their actual operations. Such being the situation as to the engineer, it follows, for the greater reason, that the office, or employment, of clerk in the engi-

neer's office cannot be deemed subordinate to, or placed in a position of authority over the office of member of a soldiers' relief commission.

For these reasons I conclude that there is no incompatibility involved in the situation described in your inquiry.

Respectfully,

C. WILLIAM O'NEILL

Attorney General