

70.

OFFICES INCOMPATIBLE—COUNTY COMMISSIONER AND COUNTY SURVEYOR.

SYLLABUS:

The offices of county commissioner and county surveyor are incompatible, and the two offices cannot be held simultaneously by the same person.

COLUMBUS, OHIO, February 11, 1927.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, requesting my opinion on the following question:

“Could a person hold the office of county commissioner and surveyor at the same time, and draw a salary for both offices?”

In determining whether or not one person may hold two or more offices at the same time, it is necessary to examine the constitutional provisions and statutes with reference to the subject, and if there be no constitutional or statutory inhibition against the holding of the several offices by the same person, an examination of their duties must be made to ascertain whether they come within the common law rule of incompatibility.

I find nothing by way of constitutional provision that would prevent a county commissioner from being at the same time county surveyor, and the only statutory enactment setting out who are not eligible to hold the office of county surveyor contains no express provision with reference to county commissioners.

Section 2783, General Code, reads as follows:

“No person holding the office of clerk of court, sheriff, county treasurer or county recorder, shall be eligible to the office of county surveyor.”

The mere fact, however, that the legislature has seen fit to enumerate certain offices that cannot be held simultaneously by the same person, does not in my opinion, signify that it was the intention of the legislature to limit the inhibition of the statute to the offices therein enumerated. The well recognized principle of common law that offices cannot be held by the same person at the same time when the duties of the two offices are conflicting has been uniformly adhered to by the courts in this country.

Dillon, on Municipal Corporations, says:

“Incompatibility in office exists where the nature and duties of the offices are such as to render it improper from considerations of public policy for one incumbent to retain both.”

It is stated by Throop on Public Officers, Section 30:

“At common law there is no limit to the number of offices which may be held simultaneously by the same person, provided that neither of them is incompatible with any other.”

This author further says in substance, that courts within the United States uniformly recognize and apply this common law rule of incompatibility, which is often difficult of application, and cannot always be stated with perfect exactness.

A general rule with reference to this subject has been laid down by Lord Coke, in these words:

“Offices are said to be incompatible and inconsistent, so as not to be executed by the same person when from the multiplicity of business in them they cannot be executed with care and ability and where their being subordinate and interfering with each other, it induces a presumption that they cannot be executed with impartiality and honesty.”

The rule is laid down in 28 Cyc. 1381, as follows:

“It may be laid down as a rule of common law that the holding of one office does not in and of itself disqualify the incumbent from holding another office at the same time, providing there is no inconsistency in the functions of the two offices in question. But at common law, two offices whose functions are inconsistent are regarded as incompatible.”

The court in its decision in the case of *State vs. Gilbert*, 12 O. C. C. (N. S.) 274, lays down this rule:

“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.”

Therefore, to determine whether or not the offices of county commissioner and county surveyor are compatible, it is necessary to look to the statutory duties of each, and for this purpose, it seems to me our question may be determined in this case, without reviewing more than a few of the statutes on the subject.

Section 2784, General Code, provides that the surveyor must give a bond, which must be approved by the county commissioners.

Section 2785, General Code, provides that when a vacancy occurs in the office of the county surveyor by death, resignation or otherwise, the county commissioners shall appoint some one to discharge the duties of the office.

Section 2786, General Code, provides that the cost and expense of furnishing the surveyor's office, and providing his tools and equipment, shall be allowed and paid from the general fund of the county, upon the approval of the county commissioners.

Section 2803, General Code, provides that for making, recording or transcribing plats or maps, the surveyor shall receive reasonable compensation, as the commissioners shall order.

Section 2815, General Code, provides that in case such work is directed by the county commissioners, the county surveyor may transcribe any and all dilapidated maps, records of plats and field notes of surveys.

Section 2470, General Code, provides that when the county commissioners consider that the public good so requires, they shall authorize and require the county surveyor to make surveys, and place monuments at the corners of originally surveyed townships.

Section 7181, General Code, provides that the county surveyor shall give his entire time and attention to the duties of the office.

Section 7200, General Code, provides that county commissioners may purchase machinery, tools and other equipment for the construction, improvement, maintenance and repair of highways, bridges and culverts, which tools and equipment shall be under the care and custody of the county surveyor; that the county surveyor shall annually make an inventory of such equipment and file the same with the county com-

missioners and at the same time file written recommendations as to what machinery, tools, etc., should be purchased for the use of the county during the ensuing year, and that the county commissioners may also at their discretion, purchase, hire or lease automobiles, motorcycles or other conveyances, and maintain the same for the use of the county surveyor and his assistants.

Without citing additional sections of the General Code with reference to the duties of the county commissioners and county surveyors, it is sufficient to say that there are many more statutory provisions setting forth the duties of the incumbents of these offices, which in my opinion are inconsistent and conflicting, and thus render the offices incompatible to such an extent that they cannot be simultaneously held by the same person.

Respectfully,
EDWARD C. TURNER,
Attorney General.

71.

APPROVAL, BONDS OF VILLAGE OF BURTON, GEAUGA COUNTY,
\$35,000.00.

COLUMBUS, OHIO, February 11, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

72.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO, THROUGH DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS, WITH BOARD OF TRUSTEES, KENT STATE NORMAL SCHOOL AND THE WOODS CONSTRUCTION AND SUPPLY COMPANY, OXFORD, OHIO, FOR LIBRARY BUILDING, EXCLUSIVE OF VENTILATING, PLUMBING AND ELECTRICAL WORK, AT A COST OF TWO HUNDRED EIGHT THOUSAND TWO HUNDRED AND NINETY-SIX DOLLARS—UNITED STATES FIDELITY AND GUARANTY COMPANY, SURETY.

COLUMBUS, OHIO, February 11, 1927.

HON. G. F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, for and on behalf of the Board of Trustees of Kent State Normal School, and The Woods Construction and Supply Company, of Oxford, Ohio. This contract covers the general contract for library building, exclusive of ventilating, plumbing and electrical work, Kent State Normal School, Kent, Ohio, and calls for an expenditure of two hundred eight thousand two hundred and ninety-six dollars (\$208,296.00).