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SYLLABUS:

The positions of deputy sheriff and township clerk are compatible, unless it is physically impossible for this same person to perform the duties of the two positions.

Columbus, Ohio, April 22, 1963

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

Dear Sir:

Your request for my opinion reads, in pertinent part, as follows:

“I am writing to request your opinion in reference to the compatibility of an elected township clerk also serving as a Deputy Sheriff not under Civil Service.”

Chapter 503, Revised Code, does not contain any provision which would cause the position of township clerk to be less compatible than that of township trustee with the position of deputy sheriff, not under civil service.

My immediate predecessor issued an opinion finding the positions of township trustee and deputy sheriff to be incompatible. Opinion No. 2311, Opinions of the Attorney General for 1961. It points out that there is no statutory inhibition upon the same person holding these two offices, but found that Section 505.441, Revised Code, prescribing the method by which township trustees may obtain additional police protection, would require a township trustee to exercise independent judgment when contracting with the county sheriff to obtain police protection for his township. Even under this rule it is doubtful, at best, that a township clerk could be called upon to exercise such independent judgment.

It appears, however, that the foregoing opinion has been reversed by the opinion of Judge Lowell C. Thompson, Court of Common Pleas, Scioto County, Ohio, in *Pistole, et al., vs. Wiltshire*, 90 Ohio Abs., 525. The Court, passing upon the compatibility of a deputy sheriff who was also serving as a township trustee, found that the offices were compatible. The court pointed out that the two offices did not fall within the proscription of Section 3.11, Revised Code, and that the positions were not incompatible by virtue of common law. The court found that the two offices are in no way incompatible within the rule of *State, ex rel., Attorney General vs. Gebert*, 12 C. C. (N.S.) 274, and seems to hold that the position of a deputy sheriff is an "employment" rather than an "office," therefore not falling within the proscription of the duality rule. The court noted that the law imposes no duty nor gives any authority to a deputy sheriff to contract for police protection under the authority of Section 505.441, Revised Code, and therefore there is no conflict resulting from the provisions of that section which would make the position of deputy sheriff incompatible with that of township trustee. It therefore concluded that the two positions are compatible, since there is no inconsistency between them and neither office is subordinate to nor in any way a check upon the other. See *State, ex rel., Attorney General, vs. Gebert, supra*.

It is my opinion that the reasoning of the Court of Common Pleas of Scioto County is persuasive and, as to the specific question you have presented, there is even less reason to find the position of township clerk incompatible with that of deputy sheriff than the position of township trustee.

Accordingly, it is my opinion and you are advised that the positions of deputy sheriff and township clerk are compatible, unless it is physically impossible for the same person to perform the duties of the two positions.

Respectfully,
WILLIAM B. SAXBE
Attorney General