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LABORER—EMPLOYED FOR TOWNSHIP—NOT INCOMPATIBLE WITH POSITION OF TOWNSHIP CLERK OF SAME TOWNSHIP.

SYLLABUS:

Employment as a laborer for a township is not incompatible with the position of township clerk of the same township.

Columbus, Ohio, March 26, 1932

Hon. Morris O. Gibbey, Prosecuting Attorney
Harrison County, Cadiz, Ohio

Dear Sir:

I have before me your letter of recent date requesting my opinion as follows:

"The following question has come up in this office. 'A' is the clerk of Township X in this county. A has been offered road work employment by the township trustees. Can A, the township clerk, be employed as ordinary labor while at the same time be clerk of the township?"

"Promptness in answering this question would be appreciated by this office."

The office of township clerk is created by Section 3299 et seq., General Code, and the powers and duties attendant upon such office are set out therein. There is nothing in these provisions declaring a township clerk ineligible for other employment. It is necessary, therefore, to determine whether holding a job as a laborer on township roads is incompatible with the position of township clerk.

It has been held that incompatibility exists between two positions of public employment whenever the duties of one may be so discharged that favoritism and preference may be accorded the other. *State, ex rel. Baden v. Gibbens*, 17 O. L. A., 341. Again, positions have been held incompatible where the exercise of the duties of the two positions creates a conflict requiring the subordination of the duties of one. *State, ex rel. Welty v. Outland*, 149 Ohio St., 13. Tested by these principles I am unable to see how employment as a laborer on township roads is incompatible with the office of township clerk.

The township clerk is clerk of the board of township trustees and his powers and duties are generally of a secretarial nature. A clerk exercises no supervision or control over an employee of this type who is hired by the township trustees. There would appear to be no inconsistency in these secretarial functions and employment as a laborer. Neither can I see how the duties of either position could be so discharged that a

preference would be accorded to the other position. It is true that where a township depository has been provided for township moneys Section 3316-1, General Code, provides that the township trustees shall dispense with a treasurer and that the duties of such position shall be performed by the township clerk. Even in such a case, however, under Section 3316, General Code, no money belonging to the township can be paid out except upon an order signed by at least two of the township trustees and the clerk acting as treasurer will not be in the position of auditing or allowing a claim which he might present as an employee of the township.

The physical ability of one person to accept employment as a laborer on township roads and at the same time to discharge the duties of the office of township clerk is a question of fact and one that cannot be answered in this opinion.

In specific answer to your question, therefore, it is my opinion that employment as a laborer for a township is not incompatible with the position of township clerk of the same township.

Respectfully,

C. WILLIAM O'NEILL
Attorney General