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SYLLABUS:

The provisions of Section 143.41, Revised Code, are not applicable to village deputy marshals and, one serving in the capacity of deputy village marshal, if otherwise qualified may lawfully declare his candidacy for election to the office of mayor of such village.

Columbus, Ohio, April 2, 1963

Hon. Bernard V. Fultz
Prosecuting Attorney
Meigs County
Pomeroy, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“The council of the Village of Middleport, Ohio has requested that I submit to you the following question for your opinion.

"The Village of Middleport has a Deputy Marshal who is also a Merchant Policeman. The Village furnishes a police cruiser which is used by the Deputy Marshal and he also has the right to use this vehicle in checking the stores which is part of his duty as a Merchant Policeman. Recently the Deputy Marshal in question filed a petition to become a candidate for Mayor in the May Primary of 1963.

"The questions of Council are:

"1. May a Deputy Marshal serve as such Deputy Marshal and at the same time be a candidate for Mayor of the same Village?

"2. Do the State Civil Service laws apply to Village Marshals so as to prevent their participation in political activity of the kind described above?"

I will first consider the second question you pose concerning the applicability of the state civil service provisions to village deputy marshals.

Article XV, Section 10, Ohio Constitution, provides that:

"Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision."

The General Assembly of Ohio, pursuant to Article XV, Section 10, Ohio Constitution, has enacted Chapter 143., Revised Code.

Section 143.41, Revised Code, which prohibits certain political activity by one in the classified civil service reads as follows:

"No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof; nor shall any officer or employee in the classified service of the state, the several counties, cities,

and city school districts thereof, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.”

The Supreme Court of Ohio had occasion to decide the applicability of Article XV, Section 10, Ohio Constitution, to villages in *State ex rel. Giovanello v. Village of Lowellville*, 139 Ohio St., 219, wherein it was held in the first syllabus:

“1. Section 10, Article XV of the Constitution, which requires appointments in the civil service to be made according to merit and fitness to be ascertained as far as practicable by competitive examinations, *applies to the state, counties and cities but not to villages.*”

(Emphasis added)

In the course of the *Giovanello* opinion, *supra*, Judge Williams stated at page 222:

“Since villages are not mentioned in the provision, the *maxim expressio unius est exclusio alterius* applies; therefore villages are excluded from the operation of the constitutional provision. Respondents claim, however that ‘there is an implied limitation and restriction upon the Legislature to pass laws that are tantamount to civil service laws for villages.’ Such an implication is inconsistent with the exclusion. * * *”

Although the extent to which the above decision holds that the state may exact civil service laws for villages is not clear, it should be noted that the legislature did not prohibit village deputy marshals from engaging in the prescribed political activity set forth in Section 143.41, *supra*. As before noted, that section applies only to officers or employees in the classified service of the *state, counties, cities, and city school districts thereof*.

I must conclude therefore that the deputy marshal described in your request would not be amenable to the provisions of Section 143.41, *supra*, by declaring his candidacy for election as village mayor.

Regarding your first question, I have been unable to discover any specific statutory or constitutional prohibition against a person such as you describe in your request from declaring his candidacy for election to the office of village mayor.

So long as he is otherwise qualified under and complies with

the requirements of the constitutional and statutory provisions concerning the eligibility and election of public officials, and is an elector of the village, I see no legal reason which would preclude him from declaring his candidacy for election to the office in question while serving as deputy marshal.

In summary, it is my opinion and you are accordingly advised that the provisions of Section 143.41, Revised Code, are not applicable to village deputy marshals and, one serving in the capacity of deputy village marshal, if otherwise qualified may lawfully declare his candidacy for election to the office of mayor of such village.

Respectfully,
WILLIAM B. SAXBE
Attorney General