

2178

INCOMPATIBLE OFFICE—DEPUTY SHERIFF MAY NOT
HOLD OFFICE OF CORONER.

SYLLABUS:

A deputy sheriff may not serve in that capacity and also hold the office of coroner of the county.

Columbus, Ohio, December 27, 1952

Hon. U. H. Buckey, Prosecuting Attorney
Noble County, Caldwell, Ohio

Dear Sir:

You have asked my opinion as to whether the Noble County coroner, while holding that office, may also be appointed and serve as a deputy sheriff of that county.

The following statement is made in 32 Ohio Jurisprudence, page 907, Section 47:

“It was early settled at common law that it was not unlawful per se for a man to hold two offices, but if the offices were incompatible then it was equally well settled that one person could not legally hold both of them at the same time. * * *

The test of incompatibility of public offices in Ohio is set forth in 32 Ohio Jurisprudence, page 908, Section 48, in which it is stated as follows:

“It was early held that the test of incompatibility * * * was in an inconsistency in the functions of the office. 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 principle duties, or is subject to supervision or control by the other, * * * or is in any way a check upon the other, or where a *contrariety* and *antagonism* would result in an attempt by one person to discharge the duties of both.”

(Emphasis added.)

In the determination of the compatibility or incompatibility of the two offices mentioned in your letter, it is necessary, before applying the rule as set forth above, to determine the duties of the two offices especially as they relate to one another.

The general powers and duties of the sheriff are set out in Section 2833, General Code. Section 2834, General Code, provides that the sheriff has a duty to execute and return process. Section 2830, General Code, provides for the appointment of deputies by the sheriff. And in Section 2831, General Code, it is stated:

“The sheriff shall be responsible for the neglect of duty or misconduct in office of each of his deputies.”

In Section 2835, General Code, the legislature gave tacit recognition to the incompatibility of the offices of coroner and sheriff. That section reads as follows:

“In an action wherein the sheriff is a party, or is interested, process shall be directed to the coroner. If both these officers are interested, process shall be directed to, and executed by, a person appointed by the court or judge.”

From the foregoing it may be seen that while it would not be impossible to obtain service on the sheriff were the coroner a deputy sheriff, the legislature nevertheless intended that the office of the coroner and that of the sheriff or his deputies be separated and occupied by different persons.

Section 2855-1, General Code, provides for a trial of a sheriff for permitting a lynching. Section 2855-2, General Code, provides for the removal of the sheriff by the Governor, and reads in part as follows:

“If after such hearing, the governor finds such sheriff guilty of negligence or delinquency in protecting such person in his hands and control as sheriff, he shall remove such sheriff from office and declare the office of such sheriff vacant and shall publish a proclamation accordingly. The *coroner* of the county shall thereupon immediately succeed to and perform the duties of sheriff until the successor of such sheriff shall have been duly elected or appointed. * * *”
(Emphasis added.)

It is apparent from the foregoing sections of the General Code that the legislature has recognized the contrariety of the offices of coroner and sheriff or deputy sheriff. If this were not so, provision would not have been made for the coroner to serve process on the sheriff. Nor would the legislature have provided that the coroner succeed the sheriff in case of that officer's removal by the Governor under Section 2855-2, General Code, for it can easily be seen that a sheriff, being responsible for his deputy's misconduct, might be removed for a deputy's misconduct, and have that deputy succeed him were the deputy also the county coroner.

As the offices of coroner and deputy sheriff are clearly incompatible in at least two of their functions, it follows that one person may not hold both offices at the same time.

In specific answer to your question, it is my opinion that a deputy sheriff may not serve in that capacity and also hold the office of coroner of the county.

Respectfully,

C. WILLIAM O'NEILL
Attorney General