

1807

COMPATIBILITY—COUNTY COURT JUDGE AND MEMBER,  
BOARD OF EDUCATION—COUNTY COURT JUDGE AND PO-  
SITION OF SCHOOL TEACHER—LIMIT OF PHYSICAL POS-  
SIBILITY.

## SYLLABUS:

1. The offices of county court judge and member of a school board are compatible and may be held by one and the same person.

2. The office of county court judge and the position of school teacher are compatible and there is no legal reason why one individual may not serve in both capacities at the same time, providing that it is physically possible to properly attend the duties of both.

Columbus, Ohio, March 5, 1958

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which presents the question of whether the office of county court judge is incompatible with the position of school teacher or member of a board of education.

There is, of course, no specific constitutional or statutory provision in Ohio relative to the incompatibility of public offices generally. Further, the special statutes relating to the office of county court judge and that of school teacher do not provide incompatibility between them. If these offices are incompatible, it must be as a consequence of the common law rule.

The Ohio common law rule is stated in *State ex rel. Attorney General v. Gebert*, 12 C. C. (N. S.), 274, which reads at page 275:

“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.”

This rule is expanded, with additional case citations, in 32 Ohio Jurisprudence, 908.

There do not appear to be any duties of the one office in question which are inconsistent with the duties of the other position nor will the performance of the duties of one result in antagonism or a conflict of duties.

Neither is one office subordinate to the other, for while a teacher is hired by the board of education, a county court judge is an elective office as provided for in Section 1907.052, Revised Code.

Although physical possibility is a question of fact and not of law, it must be considered. Should the duties of one of the offices in question consume a prohibitive amount of time or otherwise make it physically impossible for an individual to perform the duties of both, then it would not be in the best interests of the public for one individual to hold both offices at the same time.

In considering your second question as to the compatibility between a member of a school board and county court judge, it is to be noted again that no statute expressly prohibits a member of a school board from holding the office of county court judge. Accordingly, unless the offices are incompatible at common law, a person may simultaneously hold as many offices as he may be elected or appointed to. *State, ex rel. Peters v. McCallister*, 11 Ohio, 46; *State, v. Kenney*, 20 C. C., 325, 11 C. D., 261.

It has been said that the test of incompatibility is not only whether it is physically possible for one person to perform the duties of each position but also whether the functions of the offices are inconsistent. Offices are considered incompatible when one is subordinate to, or in any way a check upon the other. *State, ex rel. Attorney General v. Gebert, supra*.

Upon examination of the statutes setting forth the duties of judge of the county court and member of a board of education, I do not find that the two offices are in any wise a check upon each other or that one is in any respect subordinate to the other. Their duties lie in two different fields, and cannot in the ordinary course of business become adversary, although the county court judge may occasionally find it necessary to disqualify himself.

I note also that the only specific time that a board of education is required to meet is set forth in Section 3313.14, Revised Code, which reads:

“The board of education of each city, exempted village, and local school district shall meet on the first Monday of January of each year, and shall organize by electing one of its members president and another vice-president, both of whom shall serve for one year.

“The board of each county school district shall meet on the third Saturday of January of each year, and shall organize by electing one of its members president and another vice-president, both of whom shall serve for one year.”

Moreover, Section 3313.15, Revised Code, requires only that regular meetings be held every two months.

From the foregoing, it seems clear that the time required to perform the duties of a member of a board of education is not so demanding as to interfere with the functions of a county court judge.

Accordingly, it is my opinion: (1) that the offices of county court judge and member of a school board are compatible and may be held by one and the same person; (2) the office of county court judge and the position of school teacher are compatible and there is no legal reason why one individual may not serve in both capacities at the same time, providing that it is physically possible to properly attend the duties of both.

Respectfully,  
WILLIAM SAXBE  
Attorney General