

to loan money unless there is statutory authorization. This proposition is so well settled in the law that there is no necessity for any citation of authority.

Specifically answering your inquiry, it is my opinion that the county commissioners have no power, by virtue of Section 18 and Sections 2548 et seq. of the General Code, to accept a mortgage from persons certified as county charges as security for poor relief to be furnished to them.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1926.

OFFICES COMPATIBLE—TOWNSHIP TRUSTEE AND MEMBER COUNTY BOARD OF EDUCATION — OFFICES INCOMPATIBLE, MEMBER COUNTY BOARD OF EDUCATION AND PROBATION OFFICER.

*SYLLABUS:*

1. *The offices of township trustee and member of the county board of education are compatible. Opinions of the Attorney General for 1931, Vol. I, page 145, approved and followed.*
2. *The offices of a member of the county board of education and probation officer appointed by virtue of section 1662, General Code, are incompatible.*

COLUMBUS, OHIO, November 29, 1933.

HON. FANNIE M. MYERS, *Prosecuting Attorney, Mount Gilead, Ohio.*

DEAR MADAM:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“May we have an opinion from your office concerning the following matters:

At the last general election in our county the same person was elected to the office of township trustee and a member of the county board of education: Another person holding the appointive office of Probation Officer of the county was elected to the county board of education.

Our query is:

- (1) May the same person hold the office of township trustee and a member of the county board of education, and
- (2) May the Probation Officer of the county also hold the office of a member of the county board of education?”

In answer to your first question, I call your attention to an opinion to be found in Opinions of the Attorney General for 1931, Vol. I, page 145. The syllabus of that opinion reads as follows:

“An elector in a township may hold the position of township trustee and member of a county board of education at one and the same time.”

I concur in the conclusion reached in that opinion and in the reasoning upon which it is based.

In answering your second question, I assume you refer to the probation officer of a juvenile court appointed by virtue of section 1662, General Code. This office has in several opinions held that probation officers are within the classified civil service, except particular probation officers, who, by designation of the judge, under subsection 8 of section 486-8, General Code, or by determination of the State Civil Service Commission under subsection 10 of said section, have been placed in the unclassified service. See Opinions of the Attorney General for 1927, Vol. I, page 462; Opinions of the Attorney General for 1929, Vol. I, page 19. If the particular probation officer in question were in the civil service, it would follow that he could not hold at the same time an elective public office, since this office has held that under the provisions of section 486-23, General Code, holding public office is taking part in politics within the inhibition of said section. See Opinions of the Attorney General for 1928, Vol. II, page 1119; Opinions of the Attorney General for 1929, Vol. II, pages 837 and 886. However, in a subsequent communication, you state that the probation officer in question is not under the classified civil service. This raises the question of whether or not the positions of a probation officer, who was not under classified civil service, and a member of the county board of education are compatible. Public offices are said to be incompatible when they are made so by statute, or when by reason of the common law rule of incompatibility they are rendered incompatible. The best definition of the common law rule of incompatibility to be found in Ohio is the one stated by the court in the case of *State, ex rel., vs. Gebert*, 12 O. C. C. (N. S.) 274 at page 275, as follows:

“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.”

An examination of the sections of the Code relative to the duties of a probation officer and of a member of the county board of education discloses at least one objection. Section 7769-1, General Code, providing for the employment of county attendance officers by the county boards of education, reads as follows:

“Every county board of education shall employ a county attendance officer, and may employ or appoint such assistants as the board may deem advisable. The compensation and necessary traveling expenses of such attendance officer and assistants shall be paid out of the county board of education fund. With the consent and approval of the judge of the juvenile court, a probation officer of the court may be designated as the county attendance officer or as an assistant. The compensation of the probation officers of the juvenile court so designated shall be fixed and paid in the same manner as salaries of other probation officers of the juvenile court; their traveling expenses as attendance officers which would not be incurred as probation officers shall be paid out of the county board of education fund. In addition to the compensation herein provided the county board of education may pay such additional compensation as it may deem advisable, to any probation officer designated as attendance officer and such additional amount shall be paid from the county board of education fund. The county attendance officer and assistants shall work under the direction of the county superintendent of schools. The authority of such attendance officer and assistants shall extend to all the village and rural school districts which form the

county school district. But this section shall not be interpreted to confine their authority to investigate employment to that within the county school district."

It can be readily seen that the above section might create a situation where a person holding both the positions of probation officer and member of the county board of education would have inconsistent interests. By virtue of this section, the probation officer may be appointed the attendance officer. While it is true that this is a mere contingency and that the board does not have to appoint the probation officer and that, if it does, it must meet with the approval of the juvenile court, still it would appear that a member of the county board of education might wish to appoint the probation officer as attendance officer if he himself were the probation officer.

This office has, in past opinions, declared that a mere contingency which would create inconsistent interests is sufficient to declare offices incompatible. See Opinions of the Attorney General for 1927, Vol. III, page 2325. The following is stated at page 2326:

"The question might arise whether or not, when the incompatibility between offices or public employments would not exist except upon the happening of certain contingencies, the positions would be said to be incompatible before the contingencies arise or only after the happening of the occurrences upon which the contingency hinges. I do not find that this question has ever been considered by the courts or text writers.

It would seem apparent to me, however, that when an officer was elected or appointed for a definite term or an employe was employed by contract for a definite time, as are teachers, principals and superintendents of the schools in local districts, if there be a possibility of the contingency arising during the term of office or during the time which the contract of employment covers, which would make a position incompatible, the rule of incompatibility would apply.

In an early English case, *Rex vs. Tizzard*, 9 B & C 418, Judge Bailey in speaking of incompatibility of offices uses this language:

"I think that the two offices are incompatible when the holder cannot in every instance discharge the duty of each."

The above language was approved in Opinions of the Attorney General for 1929, Vol. II, page 1442. It would, therefore, appear that a member of the county board of education, if permitted to hold the position of probation officer, might be placed in a position where his own personal interests would conflict with those of the county.

In view of the above discussion, it is my opinion, in specific answer to your inquiries, that:

1. The offices of township trustee and member of the county board of education are compatible. Opinions of the Attorney General for 1931, Vol. I, page 145, approved and followed.

2. The offices of a member of the county board of education and probation officer appointed by virtue of section 1662, General Code, are incompatible.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*