

**OPINION NO. 1612****Syllabus:**

The positions of clerk of a local school board and school bus driver employed by the same school board are not incompatible, and one person may discharge the duties of both, provided that it is not physically impossible to do so.

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**To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio**  
**By: William B. Saxbe, Attorney General, December 29, 1964**

Your request for my opinion reads as follows:

"I would ask the question whether or not it would be proper for a clerk of a township local school board to be employed as a bus driver for the same local school district.

"Ohio Revised Code Section 3313.33 refers to members of the school board and not to clerks."

In responding to your request, it will be assumed that the clerk referred to in your letter is not a member of the board of education. I place emphasis on this because in my opinion, Section 3313.33, Revised Code, would preclude the clerk who is also a member of the board of education from being employed by the board of education as a bus driver. Section 3313.33, supra, provides, in part, as follows:

"Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board shall have, directly or indirectly, any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board."

See also Opinion No. 3845, Opinions of the Attorney General for 1931, page 1498.

The statutory provisions relevant to the position of school bus driver are Sections 3327.01 and 3327.10, Revised Code. The former provides that a board of education is obligated to provide transportation for school children and the latter specifies the qualifications of a school bus driver. Although there are no statutory provisions setting out the duties of a school bus driver, it is nevertheless evident from the nature of the position what the duties are.

The clerk of a board of education is elected by the board of education pursuant to Section 3313.22, Revised Code. Under Section 3313.26, Revised Code, such a clerk is required to record the proceedings of board meetings. Under Section 3313.261, Revised Code, the clerk is required to notify the board of elections of all changes in the boundaries of a school district. Pursuant to Sections 3313.27, 3313.30 and 3313.51, Revised Code, the clerk is given certain accounting duties as to the funds of the district. It is apparent that the duties of such clerk are mostly ministerial and clerical in character.

Upon a review of the provisions of law pertaining to a school bus driver and the clerk of a local school board, I am unable to find any provision prohibiting a person from serving in both capacities at the same time. If such offices are to be found incompatible, therefore, it must be as a result of the common law rule of incompatibility. Such rule is set forth in the case of State, ex rel., Attorney General v. Gebert, 12 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."

Due to the nature of the positions involved, I fail to see how one is subordinate to or in any way a check upon the other.

It is therefore my opinion and you are accordingly advised that the positions of clerk of a local school board and school bus driver employed by the same school board are not incompatible, and one person may discharge the duties of both, provided that it is not physically impossible to do so.