

**OPINION NO. 69-150**

**Syllabus:**

A classified position in a county engineer's office is incompatible with an elected membership in a village board of trustees of public affairs and such positions may not be held concurrently by the same person.

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**To: Gene Henry, Geauga County Pros. Atty., Chardon, Ohio**  
**By: Paul W. Brown, Attorney General, November 17, 1969**

Your request for my opinion reads as follows:

"An employee of the Geauga County Sanitary Engineer's office is a candidate for the Board of Public Affairs of Chardon Village. Said em-

ployee is in charge of waste and water treatment plants under the county's jurisdiction, and further, under the present month to month agreement between the Village and the County, the County Sanitary Engineer's office makes the necessary tests required by the State regarding the Village of Chardon' Sanitary Sewer Plant. Said employee has an active part in making such tests and recommendations.

"My question is: 'Is it compatible for such an employee to hold such office on Board of Public Affairs, Chardon Village?'"

At the outset I note that your opinion request mentions factors that are pertinent to the common law rule on incompatibility, i.e., offices are considered incompatible when one is subordinate to, or in any way a check upon, the other.

In a recent opinion, Opinion No. 69-115, Opinions of the Attorney General for 1969, I was concerned with the compatibility of the office of county recorder with the office of county veterans' service officer, and in that Opinion I called attention to the fact that public offices are subject to two types of incompatibility, statutory and common law. Statutory incompatibility arises when some provision of law establishes criteria for one of the jobs that cannot be met by the person if he holds the other job at the same time. If your situation fails to pass the statutory test, the common law test would be immaterial.

Section 10, Article XV, Constitution of Ohio, states:

"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."

Section 143.08, Revised Code, provides in part as follows:

"The civil service of the state and the several counties \* \* \* shall be divided into the unclassified service and the classified service.

\* \* \* \* \*

"(B) The classified service shall comprise all persons in the employe of the state and the several counties \* \* \* not specifically included in the unclassified service \* \* \*."

You have advised me that the employee in question works in the office of the county engineer and is considered to be in the unclassified service.

The Court of Appeals, Franklin County, stated in Henslee v. State Personnel Board of Review, 44 O.O. 2d, 206 (1968), that the mere fact that a state employee was carried on the payroll as in the unclassified service did not establish that classification.

I fail to find employees of a county engineer listed in the unclassified civil service under Section 143.08, Revised Code.

If the employee in question were exempt from the classified service, the exemption would have to be based on the provisions of subparagraph (9) of the statute and as the court noted in Henslee, supra, the exemptions of job positions of the types described in subparagraph (9) are not self-executing, but must be obtained in accordance with procedures prescribed by the Director of State Personnel.

Henslee was concerned with a state employee, but Section 143.08, supra, pertains equally to county employees and the Department of State Personnel advises that their regulations apply equally to county employees.

In the absence of evidence supporting an exemption from the classified service, I must conclude that the employee in question occupies a classified service position.

Section 735.28, Revised Code, reads as follows:

"In each village in which a water works, electric light plant, artificial or natural gas plant, or other similar public utility is situated, or when the legislative authority thereof orders a water works, electric light plant, natural or artificial gas plant, or other similar public utility, to be constructed, or to be leased or purchased from any individual, company, or corporation, or when such legislative authority determines to establish a schedule of rates or charges of rents for use of the sewerage system and sewage pumping, treatment, and disposal works of the village, such legislative authority shall establish a board of trustees of public affairs, which shall consist of three members who are residents of the village.

"In the year 1967 one member shall be elected for a term of two years. In the year 1967 and quadrennially thereafter, two members of the board of trustees of public affairs shall be elected for a term of four years; in the year 1969 and quadrennially thereafter, one member of the board of trustees of public affairs shall be elected for a term of four years; and thereafter all members shall have four year terms, except that members of boards of trustees of public affairs established after July 26, 1967 shall be elected as follows: at the next regular election of municipal officials occurring more than one hundred days after the appointment of the first members of such board as provided in this section, one member shall be elected for a term of two years and two members shall be elected for terms of four years each; and thereafter all such members shall be elected for terms of four years.

"When the legislative authority establishes such board, the mayor shall appoint the members thereof, subject to the confirmation of the legislative authority. The successors of such appointed members shall be elected at the next regular elec-

tion of municipal officers held in the village which occurs more than one hundred days after the appointment.

"In case of a vacancy in such board from death, resignation, or otherwise, it shall be filled for the unexpired term by appointment by the mayor, subject to confirmation by the legislative authority.

"The board shall organize by electing one of its members president. Unless the office of clerk of the board has been consolidated with the office of clerk of the village, as authorized by section 733.28 of the Revised Code, it may elect a clerk, who shall be known as the clerk of the board of trustees of public affairs."

Section 735.29, Revised Code, states in pertinent part:

"The board of trustees of public affairs, appointed under section 735.28 of the Revised Code shall manage, conduct, and control the water works, electric light plants, artificial or natural gas plants, or other similar public utilities, furnish supplies of water, electricity, or gas, collect all water, electric, and gas rents, and appoint necessary officers, employees, and agents.

"\* \* \* \* \*"

Section 143.41, Revised Code, provides in part as follows:

"No officer or employee in the classified service of the state, the several counties \* \* \* 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 candidate for public office; \* \* \* nor shall any officer or employee in the classified service of the state, the several counties \* \* \* take part in politics other than to vote as he pleases and to express freely his political opinion."

One who becomes a candidate for, is elected to, or holds an elective public office such as that as a member of a village board of trustees of public affairs would be taking part in politics other than to vote as he pleases and to express his political opinion, and such person could not also hold an office or position under the classified service without being in violation of Section 143.41, supra.

It is, therefore, my opinion and you are so advised that a classified position in a county engineer's office is incompatible with an elected membership in a village board of trustees of public affairs and such positions may not be held concurrently by the same person.