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COMPATIBILITY—MEMBER, BOARD OF EDUCATION OF LOCAL SCHOOL DISTRICT AND COUNTY ADMINISTRATOR INCOMPATIBLE—§ 305.29 RC.

SYLLABUS:

The office of a member of the board of education of a local school district and the office of county administrator, created under the provisions of Section 305.29, Revised Code, are incompatible.

Columbus, Ohio, October 30, 1957

Hon. Harold D. Spears, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion as to the compatibility of the office of a member of the board of education of a local school district and that of county administrator, newly established by Section 305.29, Revised Code.

There is no express statutory or constitutional prohibition against one person holding the two offices here in question; nor is there any provision in the law requiring full time be devoted to either of these positions, although we may suppose that in the more populous counties

the board might well require the administrator, as a matter of policy, to give his full time and attention to his duties. There is a well established common law rule that one person cannot hold two offices which by their nature are incompatible. A test of incompatibility frequently applied, as stated in Opinion No. 398, Opinions of the Attorney General for 1949, p. 131, is:

“* * * where the duties and functions of each are inherently inconsistent and repugnant so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially and efficiently the duties of both offices, considerations of public policy render it improper for one incumbent to retain both offices.”

The only conflict of loyalty which I foresee might possibly arise between the two offices here in question would result from the statutory budget provisions set out in Section 5705.31, *et seq.*, Revised Code.

The board of county commissioners and the board of education of each school district, except county school districts, are taxing authorities under the definitions found in Section 5705.01, Revised Code, and each such board must submit its proposed budget for the approval of the budget commission of the county. See Section 5705.31, Revised Code.

Representatives of the subdivisions frequently appear before the budget commission, and on occasion, before the board of tax appeals, to present arguments relating to adjustments or revisions of the budget benefiting their district.

Looking now to the specific duties of the position of county administrator, I quote in part Section 305.30, Revised Code:

“The county administrator shall, *under the direction* of the board: * * * keep the board fully advised on the financial condition of the county, preparing and submitting a budget for the next fiscal year * * *”
(Emphasis added.)

I note that this is quite similar to the duty imposed on the mayor of a city or village by Section 733.32, Revised Code, which section provides:

“The mayor shall communicate to the legislative authority from time to time a statement of the finances of the municipal corporation, and such other information relating thereto and to the general condition of the affairs of such municipal corporation as he deems proper or as is required by the legislative authority.”

There have been several opinions by my predecessors in office holding that the offices of (1) mayor of villages or cities, and (2) member of rural or city boards of education, are compatible:

Opinion No. 465, Opinions of the Attorney General for 1913, Vol. II, p. 1372.

Opinion No. 943, Opinions of the Attorney General for 1918, Vol. I, p. 124.

Opinion No. 2155, Opinions of the Attorney General for 1934, Vol. I, p. 21.

Opinion No. 2598, Opinions of the Attorney General for 1934, Vol. I, p. 569.

In the latter two opinions cited above, the question of incompatibility because of these budget provisions was discussed, and even though the mayor had power over the board of tax commissioners as well as the council by virtue of his veto power, it was nevertheless held that the office of mayor was ministerial in nature and therefore not incompatible with the office of member of the board of education. On this point, the writer of the last opinion above cited, said, pp. 571, 572:

“Since the city board of education is the taxing authority for the city school district (sections 5625-1, *et seq.*, General Code), the question is raised as to the possibility of a situation where the budget for the board of education might be so high, though still within the legal limitations, that the balance of the tax funds available for city sinking (sic) fund and operating expenses would thereby be reduced, or the converse situation might be true. In other words, as a member of the city board of education, he might favor the school district to the detriment of the city; or, as mayor, by virtue of his authority to appoint the trustees of the sinking fund together with his veto power over the acts of council (section 4234, General Code), he can effectively control the amount of the city budget. In this connection, it is to be noticed that the mayor of a village by virtue of his office is a member of the sinking fund trustees of the village. Nevertheless, the two early opinions, *supra*, held that a village mayor could also be a member of a village board of education, and the 1934 opinion held that a village mayor could also be a member of a rural board of education which comprised a district consisting of the entire village and part of a township.

The memorandum in question refers to an opinion to be found in the Annual Report of the Attorney General for 1910-1911 at

page 1041. Suffice to say, the statutes relevant to that opinion have since been repealed. There is also a reference to an opinion to be found in Opinions of the Attorney General for 1922, Volume I, at page 615. The syllabus of this opinion reads as follows:

“Under the provisions of section 4526 G. C., setting forth the powers and duties of the board of tax commissioners in a city, the position of superintendent of city schools is incompatible with the office of member of the board of tax commissioners (4523) in such city, and the two positions may not be held by one and the same person at the same time.”

The above opinion was based upon the fact that as superintendent the board of education might send him to appear before the county budget commission, or even before the board of tax commissioners in a city school district, which would affect one way or the other the budget desired by the board of education and those connected with school administration. Without passing upon the merits of this opinion, it is sufficient to say that the mayor of the city does not appear officially before the tax commissioners. He is not a member of the taxing authority of the city. To say that merely because he has authority to appoint the trustees of the sinking fund is to render the holding of the positions in question incompatible, is to stretch the common law rule of incompatibility to an extreme degree. I have examined the statutes relative to the duties of the positions in question, and I am unable to say that one and the same person may not hold these positions.”

A somewhat similar question was under study in Opinion No. 398, Opinions of the Attorney General for 1949, p. 131, in which the writer said, pp. 133, 134:

“It is thus seen that both an exempted village school district and a county are subdivisions of the state and the taxing authorities of these subdivisions are the board of education and the county commissioners, respectively. Under the provisions of Section 5625-20, General Code, the taxing authorities of these subdivisions are under a duty to prepare budgets for their respective subdivisions each year and file them with the county auditor, who in turn presents them to the budget commission of the county (Section 5625-22 and 5625-23, General Code). In connection with the preparation of such budgets or the possible revision thereof, it frequently happens that the taxing authorities of these subdivisions appear before the budget commission, or possibly the Board of Tax Appeals if the budget is appealed, to present arguments relative to adjustments or revisions benefiting their districts, and it may well be that such adjustments or revisions contended for in connection with one subdivision would

be detrimental to the other subdivision, and where presented by one person there may be a conscious or unconscious bias or prejudice. There probably are other situations where the duties and functions of these offices would be in conflict, however the conclusion seems inescapable that on the basis of taxing duties and functions alone these offices are incompatible.”

Our specific question here, therefore, is whether the duties of the county administrator are such as to involve a conflict of interest in budget matters. It is quite clear, under Section 305.29 and 305.30, Revised Code, that the county administrator acts under the direction of the board of county commissioners and is wholly subordinate to such board. The board may well require him to defend, before the budget commission, the budget which he has prepared for the board. In doing this he would clearly be subject to a division of loyalty between the board of which he is a member and the board which employs him and which he serves during their pleasure. Moreover, there is a like division of loyalty in the act of *preparing* the budget of his employer board, for he would normally have constantly in mind its effect on the budget of the board of which he is a member.

The administrator’s office is thus clearly distinguishable from that of the mayor, discussed in the 1915 opinion, so far as duties relating to the budget is concerned, and I cannot regard that ruling persuasive in the situation here involved. Rather I am inclined to the view that the rationale of the 1949 opinion, *supra*, is equally applicable, and that we have in the case at hand a clear case of “contrariety or antagonism” between the two offices.

It is therefore my opinion in specific answer to your question that the office of a member of the board of education of a local school district and the office of county administrator, created under the provisions of Section 305.29, Revised Code, are incompatible.

Respectfully,
WILLIAM SANBE
Attorney General