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POSITION OF CLERK OF A CITY BOARD IS INCOMPATIBLE WITH THE POSITIONS OF TEACHER, PRINCIPAL, ASST. PRINCIPAL AND DIRECTOR OF CURRICULUM IN A CITY SCHOOL DISTRICT--§§3313.22, 3313.36, R.C.

SYLLABUS:

Under Sections 3313.22 and 3313.36, Revised Code, the position of clerk of a city board of education is incompatible with the positions of teacher, principal, assistant principal, and director of curriculum in the city school district.

Columbus, Ohio, June 14, 1961

Hon. John T. Corrigan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads:

“Your opinion is requested as to the compatibility of the following positions in a city board of education if held by the same person:

1. Clerk of the board and teacher in the same district.
2. Clerk of the board and principal in the same district.
3. Clerk of the board and assistant principal in the same school district.

4. Clerk of the board and director of curriculum in the same school district.”

Positions are incompatible when expressly made so by provisions of the constitution or statutes, or are made incompatible by the common law test of incompatibility. Opinion No. 1345, Opinions of the Attorney General for 1953, page 1213.

The combination of positions described in your request are not, so far as I can ascertain, prohibited by any constitutional or statutory provision; therefore, the common law rule will apply. This rule is set forth in *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.”

The election of a clerk by a board of education is provided for in Section 3313.22, Revised Code, reading :

“The board of education of each local, exempted village, and city school district at an organization meeting shall elect a clerk who may be a member of the board and *in the case of a local school district such clerk may be a teacher regularly employed as a teacher by such board*. Such clerk shall be elected for a term not to exceed four years. In the case of a county board, the county superintendent shall act as clerk of such board.” (Emphasis added)

The emphasized phrase permits the clerk of a *local* school district to serve as a teacher; and under the doctrine of *inclusio unius est exclusio alterius* it would appear that the clerk of any other type of school district cannot serve as a teacher within the same district. I do not, however, deem it necessary to base my opinion in this matter on that rule, as a conflict of interest question appears to be definitely present in this matter.

Section 3313.51, Revised Code, makes the clerk of the board of education the treasurer of school funds. Unless the clerk is incapacitated from signing he must be one of the two officers signing checks paying out school district moneys. In this area, a specific mandatory duty is imposed on the clerk not to draw a check as payment to a teacher for services until the teacher files certain reports with him, Section 3319.36, Revised Code, reading :

“No clerk of a board of education shall draw a check for the payment of a teacher for services until the teacher files with him such reports as are required by the state board of education, by the school district board of education, and the superintendent of schools, and a written statement from the county, city, or exempted village superintendent of schools that the teacher has filed with him a legal teacher’s certificate, or true copy thereof, to teach the subjects or grades taught, with the dates of its validity. The state board of education shall prescribe the record and administration for such filing of certificates in county school districts.

“Upon notice to the clerk of a board of education given by the state board of education or any superintendent of schools having jurisdiction that reports required of a teacher have not been made, the clerk shall withhold the salary of the teacher until the required reports are completed and furnished.”

It is my opinion that this section causes the clerk of a board of education to act as a check upon a teacher. Accordingly, the position of clerk and teacher of a city school district are incompatible. See also Opinion No. 398, Opinions of the Attorney General for 1911, page 1680, Opinion No. 1025, Opinions of the Attorney General for 1915, page 2229, Opinion No. 986, Opinions of the Attorney General for 1918, page 223, each of which arrive at the same conclusion because of a statute substantially similar to Section 3319.36, Revised Code. (Section 7786, General Code)

You also inquire as to whether the position of clerk of a city board of education is incompatible with the positions of either principal, assistant principal, or director of curriculum when either of these are in the same school district. In this regard I call your attention to Section 3319.09, Revised Code, reading in part :

“As used in sections 3319.08 to 3319.18, inclusive, of the Revised Code:

“(A) Teacher means all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification.

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Though this section limits its applicability to certain enumerated sections of the Revised Code, it does contain the recognized definition of the term “teacher” as used in Ohio and I am of the opinion that said definition

should be applied in the present case. See also Opinion No. 245, Opinions of the Attorney General for 1957, page 73, where this interpretation was discussed affirmatively, though not relied upon because it was unnecessary to do so; and Section 3319.22, Revised Code, where, in regard to teachers' certificates, are found teachers, principals, supervisors, and even superintendents.

Though the director of curriculum position is not mentioned in Section 3319.09, Revised Code, I am assuming that it is an "educational position for which the employing board requires certification" and I conclude that such a director is a "teacher" within the purview of Section 3319.09, *supra*.

Accordingly, in view of the provisions of Section 3313.36, Revised Code, requiring the clerk of a board of education to receive certain reports to be filed by teachers, and in view of the fact that under Section 3313.22, Revised Code, it is specifically provided that the clerk of a local school district may serve as a teacher in the district, while no other clerks are given such authority, it is my opinion and you are advised that under Sections 3313.22 and 3313.36, Revised Code, the position of clerk of a city board of education is incompatible with the positions of teacher, principal, assistant principal, and director of curriculum in the city school district.

Respectfully,

MARK McELROY

Attorney General