

OPINION NO. 72-066

Syllabus:

The position of teacher in a community college is compatible with that of county commissioner of a county which is part of the community college district.

To: Fred V. Skok, Pros. Atty., Lake County, Painesville, Ohio
By: William J. Brown, Attorney General, August 10, 1972

I have before me your request for my opinion, which asks the following question:

"Is the office of County Commissioner incompatible with the position of a full-time tenured, salaried teacher in a community college, some of whose trustees are appointed by the Lake County Commissioners?"

You also ask whether these positions would be incompatible if the teacher is not full time and does not have tenure.

Several Sections of the Ohio Revised Code are pertinent to your question. Section 3354.05, Revised Code, provides that:

"Within ninety days after a community college district has been declared to be established, pursuant to provisions of sections 3354.02 to 3354.04, inclusive, of the Revised Code, nine persons, all of whom shall be residents of the district, shall be appointed as a board of trustees of the community college district. Six trustees shall be appointed by the board of county commissioners or boards of county commissioners of such district and three trustees shall be appointed by the governor, with the advice and consent of the senate. At the time of the initial meeting of the trustees a drawing shall be held to determine the initial term of each appointee, one for a term of two years, three for terms of three years, three for terms of four years, and two for terms of five years. At the expiration of each such

term, and thereafter, each appointment shall be for a term of five years.

"In addition to the seven trustees holding office at each of the community colleges created prior to October 13, 1967, two trustees shall be appointed, each for a term of five years, by the governor, with the advice and consent of the senate, immediately after October 13, 1967. A third trustee shall be appointed for a five-year term by the governor, with the advice and consent of the senate, at the earliest date a vacancy occurs in one of the seven original board positions. At the expiration of each of the three terms appointed by the governor, and thereafter, the governor shall make appointments, with the advice and consent of the senate, to the board for five-year terms. At the expiration of each of the remaining six terms, and thereafter, the board of county commissioners or boards of county commissioners shall make each appointment for a term of five years. Except as otherwise provided in this section, all vacancies in an unexpired term shall be filled in the same manner as the original appointment, and the trustee so appointed shall serve for the remainder of the unexpired term."

Section 3354.09, Revised Code, provides in part that:

"The board of trustees of a community college district may:

"(A) Own and operate a community college, pursuant to an official plan prepared and approved in accordance with section 3354.07 of the Revised Code or enter into a contract with a generally accredited public university or college for operation of such community college by such university or college pursuant to an official plan prepared and approved in accordance with section 3354.07 of the Revised Code.

* * * * *

"(D) Appoint the administrative officers, faculty, and staff, necessary and proper for such community college, and fix their compensation except in instances in which the board of trustees has delegated such powers to a college or university operating such community college pursuant to a contract entered into by the board of trustees of the district;

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"(F) Develop and adopt, pursuant to the official plan, the curricular programs identified in section 3354.01 of the Revised Code as arts and sciences programs and technical pro-

grams, or either, and may include adult-education programs:

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I find no statute which specifically makes the two positions in question incompatible. Therefore, it is necessary to consider them in light of the common law rule of incompatibility which was set out in State ex rel., Attorney General v. Gebert, 12 Ohio C.C.R. (N.S.) 274, 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."

Because Section 3354.03, Revised Code, recognizes a community college district as a separate political subdivision in which the board of trustees is given broad authority, pursuant to Section 3354.09, supra, to own and operate the community college and to hire employees, the only way in which a teacher can be considered subordinate to the county commissioners is indirectly through the commissioners' power to appoint or reappoint some of the trustees. The question then is whether this indirect effect, which the selection of trustees of a community college district has on teachers in the college, creates a conflict such as to make the position of county commissioner incompatible with that of teacher in a community college.

In Opinion No. 71-081, Opinions of the Attorney General for 1971, I considered a similar fact pattern in which a teacher in a joint vocational school district sought membership on a county school board. The county school board was one of several boards, which, as members of the joint vocational school district, sent representatives to the joint vocational school board. In that Opinion I said:

"It may be argued that, if the teacher becomes a member of the county board, he may be in a position to exert some indirect control over the vocational school board since he will have a vote in naming his county's representative on the vocational school board. It seems quite clear, however, from those parts of Section 3311.19, supra, which follow the passages quoted, that the county board and the vocational school board are completely independent entities; that the county board has no power to remove its representative until he has completed his term; and that the vocational school board has the same powers, within its own proper jurisdiction, as the county board exercises over the county school system.

I fail to see any basis for a legal distinction between the factual situation which I considered in that Opinion and the facts presented here. The two boards in this case, the board of trustees of the community college and the board of county commissioners, are just as much "completely independent entities" as were the county board of education and the vocational school board in Opinion No. 71-081, supra. The college board of trustees is composed of nine members; and the fact that the teacher, as a member of the three-man board

of county commissioners, will vote annually for one of the trustee positions (two, every fifth year), gives him no greater indirect influence over the trustees than was found to be present in Opinion No. 71-081, supra.

I realized at the time that Opinion was written that it presented a borderline case, but I see no reason to say that the present case falls on the other side of the line there drawn. Here, as there, the possibility of a conflict between the two positions is too remote and speculative to be given any weight.

In specific answer to your question it is my opinion, and you are so advised, that the position of teacher in a community college is compatible with that of county commissioner of a county which is part of the community college district.