

OPINION 65-8

Syllabus:

The positions of county recorder and member, village board of trustees of public affairs, are not incompatible as long as it is physically possible for one person to discharge the duties of both.

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To: Edward D. Mosser, Harrison County Pros. Atty., Cadiz, Ohio
By: William B. Saxbe, Attorney General, January 13, 1965

I have your request for my opinion in which you ask whether one person may simultaneously hold the office of county recorder and member, village board of trustees of public affairs.

The county recorder, under Section 317.08, Revised Code, keeps records of the county deeds, mortgages, powers of attorney, plats and leases. For this service he can charge a fee. There is no specific statutory provision which prevents a county recorder from holding another position.

A member of the village board of trustees of public affairs shall, according to Section 735.29, Revised Code:

"* * * 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.

"The board may make such bylaws and regulations as it deems necessary for the safe, economical, and efficient management and protection of such works, plants, and public utilities. Such bylaws and regulations, when not repugnant to municipal ordinances or to the constitution or laws of this state, shall have the same validity as ordinances."

There is no statutory restriction preventing a trustee from serving in another position.

There being no statutory prohibition, the only question remaining to be answered is whether the two offices are incompatible under the common law rule that one person may not simultaneously hold positions which are incompatible. The test is stated in State ex rel Attorney General v. Gebert, 12 C.C. (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 to discharge the duties of both."

An examination of the statutory duties of the county recorder and member, village board of trustees of public affairs, does not reveal any situations in which either office would be subordinate to, or a check upon, the other.

Whether it is physically possible for one person to discharge the duties of both positions is a question of fact which can best be answered on a local level.

Thus, it is my opinion and you are hereby advised that the positions of county recorder and member, village board of trustees of public affairs, are not incompatible as long as it is physically possible for one person to discharge the duties of both.