

1176

OFFICE OF COUNTY ADMINISTRATOR—INCOMPATIBLE  
WITH OFFICE OF MAYOR OF VILLAGE IN SAME COUNTY.

## SYLLABUS:

1. A board of county commissioners may not lawfully employ a county administrator who is mayor of a village within the county.
2. A board of county commissioners may not lawfully employ a person as an executive secretary of such board, whether or not such person is also mayor of a village within the county.

Columbus, Ohio, March 3, 1960

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have received a letter from the County Commissioners of Montgomery County advising us that they have under consideration the hiring of a person as County Administrator who is presently the Mayor of a Village within the County. They presented the question to us as to whether these positions are compatible.

“In Opinion numbered 1229, Opinions of the Attorney General for 1957, Volume 1, Page 626, which is one of the few opinions pertaining to County Administrators, we note that the Attorney General concurs in prior opinions pertaining to mayors and their compatibility with the office of member of the board of education.

“The reason for this conclusion was that the mayor’s functions are ministerial in nature.

“The above said opinion distinguishes the office of mayor from the county administrator because the county administrator might be required to appear before the budget commission and because he participates in preparing the county budget, therefore, the opinion concludes that the position of county administrator is incompatible with the office of a member of the board of education.

“We can infer from the above opinion that the office of mayor and county administrator are compatible positions. How-

ever, because other areas of the state might be confronted with this problem we request your opinion to the following question:

“(1) May the County Commissioners employ a county administrator who is the mayor of a village within the county?”

“(2) If the answer to the first question is no, and assuming that the person they have in mind is also an attorney, may they employ him in any other capacity to perform executive secretary type functions for the county commissioners.”

In Opinion No. 778, Opinions of the Attorney General for 1959, dated August 24 of said year, I determined that a person may at the same time serve as member of a school board and as mayor of a village encompassing the school district of such board.

In Opinion No. 778, *supra*, it was pointed out that the same conclusion was reached with respect to the identical question by several of my predecessors. Opinion No. 465, Opinions of the Attorney General for 1913, page 1372; Opinion No. 1321, Opinions of the Attorney General for 1918, page 924; Opinion No. 2153, Opinions of the Attorney General for 1934, page 21.

Consideration was given in Opinion 778, *supra*, to a statement contained in Opinion 2153, *supra*, that with the adoption of the Budget Law, Sections 5625-1, *et seq.*, General Code, which are now 5705.27, *et seq.*, Revised Code, certain offices and positions which were formerly declared as compatible, might have become incompatible, for the reason that fiscal officers of the various taxing authorities were likely to present conflicting views before the county budget commission as to their financial needs. In that connection, I noted in Opinion No. 778, *supra*, that a new paragraph was added to Section 5705.32, Revised Code, by the 98th General Assembly, 123 Ohio Laws, 363, requiring such commission to permit “representatives” of each subdivision \* \* \* to appear before it to explain its financial needs, before the final determination of the amount to be allotted each subdivision has been made. Whereupon the following question was posed:

“Does the use of the generic term ‘representatives’ used in Section 5705.32, Revised Code, whereby the door is apparently being opened to spokesmen other than fiscal agents of such taxing authorities, create a possibility of conflict of interest in the sense considered as determinative in weighing the pros and cons of compatibility of two public offices?”

Opinion No. 778, *supra*, then continued:

"I believe that in the light of the well settled rule that regularity of procedure will be presumed in the absence of evidence to the contrary, such doubt as there may be should be resolved in favor of such presumption. While it is true that apparently a person simultaneously holding the position of village mayor and of that of a member of a board of education in the same district and county would, as such, have the right to appear before the county budget commission in either capacity, it is to be borne in mind that such a situation may be distinguished from one where officials of equal status, for example, members of a board of township trustees, are involved, and any of them may represent the particular subdivision in a situation pregnant with possible conflict; in the latter case, a situation can arise in which an official, *by reason of his status*, would be under the obligation to appear before the budget commission, while here, the status of either position *cannot impose such an obligation*, under any circumstances.

"\* \* \*"

(Emphasis added)

Consideration of the relationship of the office of county administrator to that of a village mayor is now required. In Opinion No. 1229, Opinions of the Attorney General for 1957, page 626, mentioned in your letter, the office of county administrator was considered in relation to that of a member of a board of education of a local district and the conclusion was reached that the two offices are incompatible. Part of Section 305.30, Revised Code, was cited as the key to the question. Such part of the mentioned section reads:

"The county administrator shall, *under the direction* of the board:

"\* \* \*"

"(F) Keep the board fully advised on the financial condition of the county, preparing and submitting a budget for the next fiscal year.

"\* \* \*"

(Emphasis added)

In such opinion, it is stated at page 630:

"\* \* \*"

"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.

“\* \* \*”

It is clear that the foregoing reasoning applies with even greater force to the situation here under consideration. It is true, as it was pointed out in Opinion 778, *supra*, that a village mayor is not required to appear before the budget commission to defend the budget of the subdivision which he heads, since under Section 5705.01, Revised Code, the village clerk is the fiscal agent of such subdivision. However, his duties, as mayor, in regard to the preparation of the village budget are practically the same (see Section 733.32, Revised Code) as are those a county administrator is under the obligation to perform relative to the preparation of the county budget. A person holding both such offices would be placed in a glaringly anomalous position in a hearing before the budget commission, for in the event of a clash of interest between the two subdivisions, he could not be equally loyal to both, the village and the county.

Your second question is, whether or not a mayor who is also an attorney, may be employed by the board of county commissioners as an executive secretary of such board.

An examination of Chapter 305., Revised Code, which contains general provisions in regard to the functions and the administration of the office of the board of county commissioners, does not disclose any provision authorizing such a board to employ an executive secretary, be it one who is an attorney or one who is not an attorney. The authority of the board to obtain services of persons for the performance of various tasks, by appointment or employment, is spelled out in Sections 305.13, 305.14, 305.15 and 305.16, Revised Code. Also, to be considered in this connection is Section 319.08, Revised Code, which reads:

“By virtue of his office, the county auditor shall be the secretary of the board of county commissioners. When requested, he shall aid the board in the performance of its duties. He shall keep an accurate record of its proceedings, and carefully preserve all documents, books, records, maps, and papers required to be deposited and kept in his office.”

Section 305.13, *supra*, provides in part:

“If the board of county commissioners finds it necessary for the clerk of the board to devote his entire time to the discharge of the duties of such position, it may appoint a full time clerk, in place of the county auditor, and such necessary assistants to the clerk as the board deems necessary. \* \* \*”

Section 305.14, *supra*, provides for the appointment of legal counsel to assist the prosecuting attorney, the board of county commissioners, or any other county board or officer, in any matter coming before such board or officer, such appointment to be made by the court of common pleas, when deemed necessary, upon the application of the prosecuting attorney and the board of county commissioners.

Section 305.15, *supra*, deals with the appointment of additional engineering personnel, provided the county engineer makes such a request in writing. In Section 305.16, *supra*, the board is given the authority to employ personnel for the care and custody of the court house and other property under its jurisdiction and control.

Section 305.14, *supra*, must be excluded from consideration since the appointment of counsel to assist the board in matters coming before it, is discretionary with the common pleas court, and such board must be joined in the request for such appointment by the county prosecutor. Obviously inapplicable here are Sections 305.13 and 305.15, *supra*.

Accordingly, your second question must be apparently answered in the negative.

Therefore, answering your specific questions, it is my opinion and you are advised:

1. A board of county commissioners may not lawfully employ a county administrator who is mayor of a village within the county.
2. A board of county commissioners may not lawfully employ a person as an executive secretary of such board, whether or not such person is also mayor of a village within the county.

Respectfully,

MARK McELROY

Attorney General