

Note from the Attorney General's Office:

1979 Op. Att'y Gen. No. 79-100 was overruled in part by
2008 Op. Att'y Gen. No. 2008-032.

OPINION NO. 79-100**Syllabus:**

An assistant city solicitor of a charter city may not concurrently serve as member of the city board of education.

To: Scott E. Jarvis, Shelby County Pros. Atty., Sidney, Ohio
By: William J. Brown, Attorney General, December 18, 1979

I have before me your request for my opinion in which you inquire whether an assistant city solicitor may also serve on the board of education of the same city.

According to the information you have provided me, the individual in question is assistant city solicitor of Sidney, Ohio, a charter city, and has recently been elected to the Sidney city board of education. Section 4-3 of the Sidney Charter provides that the "City Solicitor shall be attorney for the City and legal advisor of the Council and of all officers and departments." Although R.C. 3313.35 requires city solicitors to represent city school districts, a solicitor of a charter city has no duty or obligation to provide such representation where not so required under the city's charter. 1934 Op. Att'y Gen. No. 2478, p. 435, followed in 1970 Op. Att'y Gen. No. 70-081 and 1954 Op. Att'y Gen. No. 3644, p. 135. While the city solicitor of

Sidney is not, therefore, required by charter to act as the legal advisor to the city board of education, it has come to my attention that he in fact does provide representation to the board.

Questions concerning the compatibility of public positions involve both statutory and common law considerations, but the latter need not be addressed where a specific statute forbids the holding of the two positions under analysis. Such a statute may be found in R.C. Chapter 3313, dealing with the formation, qualifications, and functions of boards of education. Pursuant to R.C. 3313.13, "[n]o prosecuting attorney, city director of law or other official acting in a similar capacity shall be a member of a board of education."

R.C. 3313.13 is by its express terms plain and unambiguous, and, accordingly, there need be no resort to rules of statutory construction. See Cleveland Trust Co. v. Eaton, 21 Ohio St. 2d 129 (1970). There is no right to impose another meaning upon a statute which conveys a clear and definite meaning. Jasinsky v. Potts, 153 Ohio St. 529 (1950). R.C. 3313.13 states that prosecuting attorneys, city directors of law and "other officials acting in a similar capacity" shall not be members of a board of education. The obvious import of the statute's language is that such officials may not serve on any board of education whether or not they are required by statute or charter to represent the board. 1969 Op. Att'y Gen. No. 69-133.

The only remaining issue to be addressed is whether an assistant city solicitor is an official "acting in a similar capacity" to the solicitor himself. An assistant city solicitor performs, under the supervision of the solicitor, all the duties of the solicitor. Therefore, an assistant city solicitor is also barred by R.C. 3313.13 from holding membership on a board of education. See Op. No. 69-133, supra (opining that assistant prosecuting attorney may not, pursuant to R.C. 3313.13, be a member of a city board of education).

Accordingly, it is my opinion, and you are advised, that an assistant city solicitor of a charter city may not concurrently serve as member of the city board of education.