

2468

POSITIONS OF EXECUTIVE HEAD OF LOCAL SCHOOL DISTRICT AND SUPERINTENDENT OF COUNTY SCHOOL DISTRICT IN WHICH LOCAL DISTRICT IS LOCATED ARE INCOMPATIBLE—§§3311.23, 3311.08, 3319.01, 3319.02, 3319.07, R.C.

SYLLABUS:

A person may not simultaneously serve as executive head of a local school district and as superintendent of the county school district in which the local school district is located, as such positions are incompatible under Sections 3311.231, 3311.08, 3319.01, 3319.02 and 3319.07, Revised Code.

Columbus, Ohio, August 19, 1961

Hon. Rollo M. Marchant, Prosecuting Attorney
Fayette County, Washington C. H., Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Several years ago all of the various local school districts in the rural area of Fayette County, Ohio, were merged and consolidated into one local school district known as the Miami Trace Local School District. The boundaries of the Miami Trace Local School District and the boundaries of the Fayette County Board of Education are therefore coextensive. Recently the county superintendent resigned and the Fayette County Board of Education is confronted with the problem of providing a new superintendent. The Miami Trace Local School District has its own Board of Education and its own executive head who would correspond to the superintendent of a city board of education. The president of the Fayette County Board of Education has asked me to obtain an opinion from your office as to whether or not the Fayette County Board of Education may hire the executive head of the Miami Trace Local School District as Superintendent of the County Board of Education while he is also serving as executive head of the Miami Trace Local School District.

“My question to you therefore is: In a county where the only local school district is co-extensive with the territory served by the County Board of Education is the position of executive head of the Local School District and superintendent of the County School District compatible?”

I find no law or ruling which directly states that the position of executive head of a local school district and the position of superintendent of a county school district are incompatible. It is necessary, therefore, to view the common-law rule of incompatibility. Such is stated in *State, ex rel., Attorney General v. Gebert*, 12 C. C. (N.S.) 274:

“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.”

Section 3311.03, Revised Code, pertaining to local school districts, reads:

“Each school district, other than a city school district, exempted village school district, county school district, joint high

school district, or joint vocational school district, in existence on September 16, 1943, shall be known as a 'local school district' and shall continue to be known as a 'local school district' until it has lost its identity as a separate school district or has acquired a different styling as provided by law. All school districts created after September 16, 1943, other than city school districts, exempted village school districts, county school districts, or joint vocational school districts, shall be known as 'local school districts.'

Section 3311.05, Revised Code, pertaining to county school districts, reads:

"The territory within the territorial limits of a county, exclusive of the territory embraced in any city school district, exempted village school district, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes constitutes a 'county school district.'"

Section 3319.01, Revised Code, refers to superintendents of county, city, and exempted village school districts, and reads in pertinent part as follows:

* * * * *

"Such superintendent shall be the executive officer for the board, direct and assign teachers and other employees of the schools under his supervision, except as provided in section 3319.04 of the Revised Code, assign the pupils of the schools under his supervision to the proper schools and grades, provided that the assignment of a pupil to a school outside of his district of residence is approved by the board of the district of residence of such pupil, and perform such other duties as the board determines."

The county superintendent has supervision over all local districts in his county since such local districts constitute the county district. Section 3311.05, *supra*. The superintendent of a county school district has various duties prescribed by statute which are a check upon the local school district and it would be difficult for one holding the two positions of county superintendent and local executive head to act in an unbiased manner when performing these official functions.

Section 3319.02, Revised Code, reads in part as follows:

* * * * *

"The board of each city, exempted village, and local school district shall appoint principals for all high schools and for such other schools as the board designates. *Upon recommendation*

of the county superintendent, a local board may employ a person of proper certification or a person holding or qualified to hold the position of executive head of a local school district on the effective date of this act, as executive head for a period not to exceed five years beginning with the first day of August and ending on the thirty-first day of July. A board of education by a three-fourths vote of its full membership may, after considering two nominations for the position of executive head made by the county superintendent of schools, employ or re-employ a person not so nominated for such position.” (Emphasis added)

As to this section, the second paragraph of the syllabus of Opinion No. 478, Opinions of the Attorney General for 1959, page 243, reads:

“It would be contrary to public policy for a county superintendent of schools to recommend his own appointment to the position of executive head of a local district presently under his supervision, even though such appointment is to become effective after his tenure in the office of county superintendent has ended.”

Section 3319.07, Revised Code, reads as follows:

“The board of education of each city, exempted village, and local school district shall employ the teachers of the public schools of their respective districts. In making appointments teachers in the employ of the board shall be considered before new teachers are chosen in their stead. In city and exempted village districts no teacher or principal shall be employed unless such person is nominated by the superintendent of schools of such district. Such board of education, by a three-fourths vote of its full membership may re-employ any teacher whom the superintendent refuses to appoint. *In local school districts, no teacher or principal shall be employed unless nominated by the superintendent of schools of the county school district of which such local school district is a part*; by a majority vote of the full membership of such board, the board of education of any local school district may, after considering two nominations for any position made by the county superintendent, re-employ a person not so nominated for such position.”

(Emphasis added)

It would seem obvious from these sections that the county board through its superintendent was intended to be a strong influence and a check on the local school districts within its territory. Section 3311.08, Revised Code, is further illustrative of this point. This statute sets out the

manner in which a local school district may become an exempted village school district. The last paragraph of this section reads as follows :

“A census taken by the board of a local school district, of territory outside the corporate limits of a village, shall be taken by persons appointed by such board. Each person so appointed shall take an oath or affirmation to take such a census accurately. He shall make his return under oath to the clerk of the board. The clerk of the board shall send certified copies of such census to the county auditor and to the superintendent of public instruction. *Such census shall be approved by the superintendent* before the school district is deemed to have sufficient population to meet the requirements of an exempted village school district.”

(Emphasis added)

A county superintendent has further duties regarding transfers of territory within the county district. A county board may propose transfer of part or all of a local school district in its county to an adjoining county school district or to an adjoining city or exempted village school district. (Section 3311.231, Revised Code) In a situation such as this, one who is acting as county superintendent of schools and the executive head of the local school district involved might find himself in an unpleasant situation, and it would be difficult for such a person to act in an unbiased manner.

It would seem from these statutes that the General Assembly has intended that the county school board and the board's executive officer be an advisor, supervisor, and controller of the local school districts within its county and, under such statutes, the position of executive head of the local district is subordinate to the position of superintendent of the county district.

Accordingly, it is my opinion and you are advised that a person may not simultaneously serve as executive head of a local school district and as superintendent of the county school district in which the local school district is located, as such positions are incompatible under Sections 3311.231, 3311.08, 3319.01, 3319.02, and 3319.07, Revised Code.

Respectfully,

MARK MCELROY

Attorney General