

Note from the Attorney General's Office:

1959 Op. Att'y Gen. No. 59-1063 was disapproved by 1973 Op. Att'y Gen. No. 73-108.

1063

POSITION OF TEACHER IN LOCAL SCHOOL DISTRICT AND POSITION OF MEMBER OF BOARD OF EDUCATION IN ANOTHER LOCAL SCHOOL DISTRICT, INCOMPATIBLE §§3311.08, 3319.07, R.C.

SYLLABUS:

Pursuant to the provisions of Sections 3311.08 and 3319.07, Revised Code, the position of teacher in a local school district and the position of member of a board of education in another local school district, both such districts being within the same county school district, are incompatible and may not be held by one person at the same time.

Columbus, Ohio, December 30, 1959

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have before me your request for my opinion in regard to the following question:

“The Independence Local School District Board of Education has requested me to procure your opinion as to the following question:

“Where a person lives in one of two local school districts both of which are a part of the County School District and teaches in Local District ‘A’ and lives in Local District ‘B’ and is elected to membership on the Local District Board of Education in District ‘B’, where he lives and is an elector, are the teaching position in one district and the membership in the local board of education in the other district compatible

so that the concerned person may hold both positions at the same time?

“Please let us have your opinion prior to January 1st, 1960 because that is the day when the person herein concerned will, if qualified, take office as a member of the board of education to which he was elected.”

In 32 Ohio Jurisprudence, page 908, it is stated:

“* * * One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other, * * * or is in any way a check upon the other, or where a contrariety and antagonism would result in an attempt by one person to discharge the duties of both.”

Section 3311.03, Revised Code, defines a local school district as any 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, or created thereafter within the above-quoted exceptions, except that in the latter case vocational school districts are excluded.

Section 3311.05, Revised Code, defines a county school district as 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.

Section 3311.08, Revised Code, contains the provisions regarding population requirements based on federal census figures, whereby a local school district may become exempt from the supervision of the county board of education. I note that the two districts here involved are local school districts and as such not exempt from the supervision of the county board of education.

Statutes concerning boards of education are contained in Chapter 3313., Revised Code. The board of education of a local school district consists of five members who must be electors residing in such district (Section 3313.01, Revised Code). Section 3313.13, Revised Code, disqualifies prosecuting attorneys, city solicitors, or other officials acting in a similar capacity from serving as a member of any board of education, whereas, Section 3313.70, Revised Code, provides that no board of education may appoint one of its members as school physician, school dentist, or

school nurse. Section 3313.20, Revised Code, gives all boards of education the authority to make rules and regulations for their government and for the government of their employees and pupils; further, to allow compensation for employees while attending professional meetings, such compensation to be paid by the board from the general fund of the school district or the county board fund.

Construing the above mentioned provisions of Sections 3311.05 and 3311.08, Revised Code, together, the conclusion is inescapable that a local school district lacks the degree of independence enjoyed by other school districts and that it is, in fact, subservient to the authority of the board of a county school district. This is also apparent from the provision in Section 3313.20, *supra*, which allows payment of compensation of teacher-employees for time spent at professional meetings from the fund of such school district. Such conclusion is fortified by the provisions of Chapter 3319., Revised Code, which contains statutes known as the "Teachers' Tenure Act."

Section 3319.01, Revised Code, provides for the election of a superintendent by each county, city, and exempted village school district. Local school districts are not mentioned as having such authority. Under the provisions of such section, the superintendent appointed by any of the three mentioned boards of education is designated as the executive officer of the board. In the case of the superintendent of the county board (which, pursuant to Sections 3311.05 and 3311.08, *supra*, has supervision over local school districts), such superintendent acts as superintendent of all local schools within the county district, and shall:

" * * direct and assign teachers and other employees of the schools under his supervision, * * *, 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 duties as the board determines." (Emphasis added)*

The person involved in the instant case, who is a teacher in local school district "A" and was elected a member of the board of education in local district "B" within the same county, is thus placed under the control of the county school superintendent, whose mandatory duty is to direct such person in his functions as a teacher and to assign to him such tasks and responsibilities as he may deem appropriate.

Also to be considered in connection with the problem at hand is Section 3319.07, Revised Code, which reads in pertinent part:

“* * * 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 is quite clear that the provisions of this section are likely to place the person here under consideration under pressure from two directions. A situation can conceivably arise in which such person may wish in the exercise of his best judgment, to vote as a member of the board in local school district “B” for the re-employment of a teacher or principal who has not been nominated by the county school superintendent, but such person may think twice before so doing, in the belief, whether well founded or not, that he may thereby incur the displeasure or worse, of his superior the county superintendent, as teacher in local school district “A.” In any event, the vote of such member under the indicated circumstances could be a target of suspicion from many directions, regardless of the motivations behind the vote. Such suspicions, once aroused, might inevitably lead to misunderstandings and possible unspoken recriminations that could eventually reach the classrooms and the impairment of the highest attainable standards of instruction would be the probable result of such an atmosphere. This would obviously not be a desirable or healthy situation, and is one that should be prevented from arising if at all possible.

It appears, therefore, that a contrariety and antagonism could readily result in the fact situation at hand and that the one position could be a check on the other. Accordingly, in response to your specific question, it is my opinion and you are advised that pursuant to the provisions of Sections 3311.08 and 3319.07, Revised Code, the position of teacher in a local school district and the position of member of a board of education in another local school district, both such districts being within the same county school district, are incompatible and may not be held by one person at the same time.

Respectfully,
MARK McELROY
Attorney General