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INCOMPATIBLE OFFICE — MEMBER, COUNTY HEALTH BOARD AND MEMBER OF LOCAL BOARD OF EDUCATION.

SYLLABUS:

The office of member of a county health board and that of member of a local board of education are incompatible and a member of a local board of education may not also serve as a member of a county board of health.

Columbus, Ohio, September 26, 1951

Hon. Louis F. Sheridan, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

I have before me your request for my opinion as to "whether or not a member of a local board of education can also serve as a member of the county health board."

It is stated in 32 Ohio Jurisprudence, 907, Section 47, as follows:

"It was early settled at common law that it was not unlawful per se for a man to hold two offices, but if the offices were incompatible then it was equally well settled that one person could not legally hold both of them at the same time. * * *"

The test of incompatibility of public offices in Ohio is set forth in 32 Ohio Jurisprudence, 908, Section 48, in which it is stated as follows:

“It was early held that the test of incompatibility * * * was in an inconsistency in the functions of the office. 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 principle duties, or is subject to supervision or control by the other,—as an officer who presents his personal account for audit and at the same time is the officer who passes upon it,—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.”

In the determination of the compatibility or incompatibility of the two offices mentioned in your letter, it is necessary, before applying the rule as set forth above, to determine the duties of the two offices in question. Certain of the duties of district boards of health are set forth in Section 1261-26, General Code, which reads in part as follows:

“In addition to the duties now required of boards of health, it shall be the duty of each district board of health to study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The district board of health may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, *for the inspection of schools*, public institutions, jails, workhouses, children’s homes, infirmaries, and other charitable, benevolent, correctional institutions. The district board of health may also provide for the inspection of dairies, stores, restaurants, hotels and other places where food is manufactured, handled, stored, sold or offered for sale, and for the medical inspection of persons employed therein. The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease. * * * (Emphasis added.)

Section 1261-42, General Code, reads in part as follows:

“The board of health of a general health district may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. * * *

From the foregoing sections, it would appear that the board of health of a general health district has the responsibility of inspecting school premises and the general power to make orders as it deems necessary

for the prevention or restriction of disease and the prevention, abatement or suppression of nuisances.

This power of inspection of schools would seem to create a conflict of interest which would render freedom of action on the part of a member serving on both boards difficult, if not impossible.

In Opinion No. 2469, Opinions of the Attorney General for 1950, page 721, it was held that the office of member of a city board of health and that of member of city board of education are incompatible. The conclusion reached in such opinion was predicated chiefly on the provisions of section 4424, General Code, which reads in part as follows:

“The board of health shall abate all nuisances and may remove or correct all conditions detrimental to health or well-being found upon school property by serving an order upon the board of education, school board or other person responsible for such property, for the abatement of such nuisance or condition within a reasonable but fixed time. * * *”

While Section 4424 is contained in Title XII of the General Code dealing with municipal corporations and would not, by its express terms, be applicable to a general health district, the provisions of such section are made applicable to a general health district by Section 1261-30, General Code, which provides:

“The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health of this act (G. C. Sections 1261-16 to 1261-43 and 1245 et seq.). The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed.”

The question of the power of a general health district to serve an order upon a board of education pursuant to the provisions of Section 4424, General Code, was considered by one of my predecessors in Opinion No. 5091, Opinions of the Attorney General for 1942, page 332. I quote from such opinion:

“By reason of the provisions of Section 1261-30, General Code, supra, which was enacted as a part of the act of the Legislature creating boards of health for general health districts, the provisions of Section 4413, 4420 and 4424, General Code, which

were then in force and applied particularly to municipal health districts were made applicable to boards of health of general health districts. * * *

It follows that the reasoning of the 1950 opinion holding the offices of members of a city board of health and member of city board of education incompatible has equal application to the offices here in question.

Therefore, in specific answer to your question, it is my opinion that the office of member of a county health board and that of member of a local board of education are incompatible and that a member of a local board of education may not also serve as a member of a county board of health.

Respectfully,

C. WILLIAM O'NEILL
Attorney General