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COMPATIBILITY — MEMBER, OHIO STATE RACING COMMISSION AND MEMBER, COUNTY BOARD OF ELECTIONS—COMPATIBLE.

SYLLABUS:

The positions of member of the Ohio State Racing Commission and member of a county board of elections are legally compatible.

Columbus, Ohio, March 3, 1959

Mr. James M. Burtch, Jr., Secretary
Ohio State Racing Commission, Columbus, Ohio

Dear Sir:

I have your request for my opinion with reference to the compatibility of the office of member of the Ohio State Racing Commission and member of a county board of elections.

Finding no statutory provision making these positions incompatible, the common-law rule is to be applied. The rule is stated in *State, ex rel. vs. 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 to discharge the duties of both.”

The only occasion for the duties of the two positions in question to meet is found in Section 3769.14, Revised Code, providing for the submission of the question of permitting horse racing to a vote of the electors in the county. From a consideration of this section and cognate provisions of the election statutes I find no basis for holding that either position is a check in any way upon the other. As member of the board of elections one must determine the validity of the signatures and petitions submitted under authority of Section 3769.14, Revised Code. This duty is one which has no relation to the duties of the racing commission. The results of such election will, of course, affect the authority of the racing commission to issue permits in such county but this decision is one which will be made by the electors rather than by the board of elections. Under the provisions of Section 3769.14, Revised Code, no action on the part of the board of elections is necessary or authorized relative to such election except that of submitting the issue to the electors.

Therefore, it is my opinion and you are advised that the positions of member of the Ohio State Racing Commission and member of a county board of elections are legally compatible.

Respectfully,
MARK McELROY
Attorney General