

2975.

OFFICES INCOMPATIBLE—COUNTY COMMISSIONER AND MEMBER
OF RURAL BOARD OF EDUCATION.

SYLLABUS:

The offices of county commissioner and member of a rural board of education within the county are incompatible and may not be held contemporaneously by one and the same person.

COLUMBUS, OHIO, December 6, 1928.

HON. JAMES COLLIER, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads as follows:

“Are the offices of County Commissioner and member of a Rural District School Board incompatible? Can the same man hold both these offices at the same time? I have been unable to satisfy the interested parties on this question.”

There are no statutory inhibitions upon one and the same person holding the office of county commissioner, and being a member of a board of education for a rural school district within the county. It remains to be determined, therefore, whether or not the two offices are incompatible at common law. The rule of common law incompatibility is stated in the case of *State ex rel. vs. Gebert*, 12 O. C. C. (N. S.), 274, as follows:

“Offices are 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.”

By virtue of Section 5625-1, General Code, county commissioners and district boards of education are each constituted a “taxing authority”, as the term is used in the act of the Legislature of which said Section 5625-1, General Code, is a part.

By the terms of Sections 5625-19 to 5625-26, General Code, which sections are a part of the same act as is Section 5625-1, General Code, there is created in each county a county budget commission consisting of the county auditor, county treasurer and the prosecuting attorney, and the duties of said commission are fixed. It is provided therein that on or before the fifteenth day of July in each year the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. Said budget shall present certain information in detail with respect to the financial needs of the taxing subdivision during the next succeeding fiscal year, and when said budget is adopted it shall be submitted to the county auditor on or before the 20th day of July of each year or at such later time as may be prescribed by the Tax Commission of Ohio. It thereupon becomes the duty of the county auditor to lay before the budget commission the annual tax budgets submitted to him, together with an estimate to be prepared by such auditor of the amount of any state levy, the rate of any school tax levy as theretofore determined, and such other information as the budget com-

mission may request or the Tax Commission may prescribe. The budget commission is then directed to examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein.

Section 5625-24, General Code, provides as follows:

“The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom.”

It is apparent from the foregoing, that the budget commission may be compelled to make changes in the original estimates made and contained in the budgets submitted by county commissioners and the several other taxing subdivisions within the county, including rural school districts. In the event this becomes necessary, which is no doubt frequently the case, the members of the two taxing authorities in question, viz.: the county commissioners and the rural board of education may be, and frequently are, called before the budget commission for a conference to determine what changes shall be made in the estimates submitted by them. This necessarily involves consideration by the budget commission of the merits of the respective claims made by the county commissioners and other taxing authorities within the county. The result under those circumstances would be that the two boards would be placed in the position of adversaries and the members of said boards would be in the position of representing adverse interests.

I am therefore of the opinion that the offices of county commissioner and member of a board of education in a rural school district in the county are incompatible.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2976.

MUNICIPAL COURT OF PIQUA—OFFICIAL STENOGRAPHER—TRANSCRIPT FEES PAYABLE TO CLERK OF COURT.

SYLLABUS:

Moneys received by an official stenographer of the municipal court of Piqua, Ohio, for transcripts of his notes of the evidence and proceedings in the trial of cases in said court for use in the preparation of bills of exceptions in said court may not be retained by such official stenographer for his own use; but the same should be paid over to the clerk of said court who is required to account for the same in his official capacity as such clerk.