

even given color to it. I believe that a signature made with straw dipped in blood, would be equally valid and obligatory; and if so, where is the legal restriction on the implement which the signer may use? If he may use one pen, why may he not use several?—a polygraph, for example, or types—or a stamp, which the court in *Lemaign vs. Stanley*, said would be a sufficient satisfaction of the statutory requisition of signing. \* \* \*

Upon the whole, while I admit the force of the presumption that Congress, in requiring these instruments to be signed by the Secretary, had in view his autograph executed in the usual mode; and while I admit that this ought always to be preferred when it can be done; yet I am not prepared to say that his signing with a stamp or copperplate, instead of a pen, is illegal, or that it leaves the instrument so signed invalid. On the contrary, if he keeps the stamp or copperplate in his own possession and either apply it himself, or cause it to be applied by another in his presence, and by his authority, I am of opinion that the instrument is as valid, in strict law, as if he had written his name with a pen."

In view of the foregoing, I am of the opinion that a board of education may legally use mechanical devices for signing payroll checks where the officers, whose names are affixed thereto, authorize and adopt such signatures as their own.

I am further of the view that this answer is dispositive of your inquiry, as to the placing of signatures by mechanical devices upon warrants.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3791.

OFFICES INCOMPATIBLE — CITY AUDITOR AND DEPUTY  
COUNTY AUDITOR.

*SYLLABUS:*

*The same person may not simultaneously hold positions of city auditor and deputy auditor of the county in which the city is located.*

COLUMBUS, OHIO, November 28, 1931.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is hereby made of your recent request for my opinion which reads:

"May the same person hold the office of auditor of a city and deputy auditor of the county in which the city is located?

In your opinion No. 3506, dated August 13th, 1931, it was held as follows:

'The same person may not at the same time lawfully hold the position of member of a board of education of a city school

district and deputy auditor of the county in which the school district is located.'"

Section 9 of the General Code of Ohio reads in part as follows: "A deputy, when duly qualified, may perform all and singular the duties of his principal." As was pointed out in Opinion No. 3506, to which you refer, a deputy county auditor is required to hold himself in readiness and be at all times qualified to act for and instead of his principal.

It remains therefore to inquire as to whether or not a county auditor may lawfully hold the position of auditor of a city within the county. It is well settled in Ohio that in the absence of statutory prohibition on the simultaneous holding of two or more offices, the rule for determining whether or not such positions may be held concurrently by the same person is whether or not the offices are subordinate to or in any way a check upon the other and whether or not it is physically possible for one person to discharge the duties of both.

By the terms of Section 5625-1, General Code, the council of a municipality is constituted the taxing authority of such governmental subdivision and the city auditor is constituted the fiscal officer thereof.

Sections 5625-19 to 5625-26, General Code, inclusive, establish a budget commission in each county, consisting of the county auditor, county treasurer and prosecuting attorney and impose various duties on such commission.

It is provided therein that on or before the 15th day of July in each year the taxing authority of each subdivision shall adopt a tax budget for the next succeeding fiscal year. Such budget is required to present certain information in detail with respect to the financial needs of the taxing subdivision for the next succeeding fiscal year, and when said budget is adopted it shall be submitted to the county auditor on or before the 10th day of July of each year, or at such later time as may be prescribed by the Tax Commission of Ohio.

It, therefore, becomes the duty of the county auditor to lay before the budget commission the annual tax budget submitted to him together with an estimate to be prepared by such auditor of the amount of any state levy, the rate of any municipal tax levy, etc., as theretofore determined, and such other information as the budget commission may request or the Tax Commission may prescribe.

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 (G. C. §§5625-1 to 5625-39) 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."

Since the budget commission may be compelled to make changes in the original estimates made and contained in the budgets submitted by the municipalities in the county, it may become necessary for the city auditor as fiscal officer of the municipality to appear before the budget commission. In this

event there is no doubt but that the duties of the county auditor as a member of the county budget commission would conflict with the duties of a city auditor, who may be required to appear before the budget commission to insist upon a proper share of the revenue for his subdivision.

I am not unmindful of an opinion found in 1925 O. A. G. 406, which held that a deputy auditor may not act in the place of an auditor as the member of a county budget commission. In the body of such opinion reference was made to the case of *Hulse v. State*, 35 O. S. 421, which held in part as disclosed by the first branch of the syllabus:

"1. Neither a deputy clerk of the court of common pleas, nor a deputy county auditor, has any power to act in selecting the names of persons for a struck jury. That duty must be performed by the clerk, auditor, and recorder in person, except as otherwise provided in the statute. (75 Ohio L. 642, §27; Rev. Stats. §5186.)"

The then Attorney General declared:

"While this decision does not state in so many words that a judicial function may not be exercised by a deputy, it has been cited in numerous instances as authority for such rule by reason of the statement in the alternative." See also *Davies, ex. rel., v. Scherer*, 11 O. C. C. (n. s.) 209.

The case of *Hulse v. State*, supra, involved the construction of Rev. Stats. 5185 and 5188, relative to selecting and striking juries, and the latter statute read in part "if the clerk, auditor or recorder is interested in the cause, sick, absent from the county, related to either of the parties, or does not stand indifferent between them, a judge entitled to hold such court may in term time or vacation appoint some judicious disinterested person to take the place of the officer so disqualified, \* \* \*."

It is apparent from an examination of this statute that a specific manner is set forth relative to the action to be taken in case the county officials mentioned in such section are unable or disqualified to act, which section would control Rev. Stat. 4949, analogous to Section 9, General Code, which read at that time:

"A duty enjoined by statute upon a ministerial officer and an act permitted to be done by him may be performed by his lawful deputy."

A consideration of the foregoing principles leads to the conclusion that the 1925 opinion, insofar as it prohibits a deputy auditor from performing the duties of the county auditor on the county budget commission, is not tenable since there is no designated method to be followed in case of the inability on the part of the county auditor to serve on the county budget commission. It is also evident that Section 9, General Code, above quoted, confers a larger scope of authority upon deputies than that formerly conferred by Rev. Stat. 4949.

In view of the foregoing and in specific answer to your inquiry, I am of

the opinion that the same person may not concurrently hold the positions of city auditor and deputy auditor of the county in which such city is located.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3792.

APPROVAL, BONDS OF COLUMBIA TOWNSHIP RURAL SCHOOL DISTRICT, HAMILTON COUNTY, OHIO—\$900.00.

COLUMBUS, OHIO, November 28, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3793.

APPROVAL, BONDS OF NORTH OLMSTED VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$13,544.75.

COLUMBUS, OHIO, November 28, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3794.

APPROVAL, BONDS OF WOODVILLE VILLAGE SCHOOL DISTRICT, SANDUSKY COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, November 28, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3795.

APPROVAL, BONDS OF JEFFERSON COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, November 30, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*