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## COMPATABILITY—COUNTY COMMISSIONER AND SUPERVISOR, SOIL CONSERVATION DISTRICT—INCOMPATIBLE.

## SYLLABUS:

The position of supervisor of a soil conservation district as provided in Chapter 1515., Revised Code, is incompatible with the position of a member of the Board of County Commissioners.

Columbus, Ohio, January 21, 1959

Mr. Floyd E. Heft, Executive Secretary  
Ohio Soil Conservation Committee, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Ohio Soil Conservation Committee has been asked for a ruling on the validity of a soil conservation district supervisor serving as such and also as a county commissioner.

“We wish to point out that under Sec. 1515.07 of the Revised Code, the law specifically states, ‘A supervisor shall receive no compensation for his service, but he is entitled to be reimbursed for the necessary expenses incurred in the discharge of his official duties.’ Also Sec. 1515.10 which provides that the board of county commissioners of a county may appropriate money to the local soil conservation district for the purposes described in 1515.09.

“The Committee requests your formal opinion as to the legality of the same individual serving as county commissioner and soil conservation district supervisor simultaneously.”

As stated in your letter the supervisor of a soil conservation district as provided in Section 1515.08, Revised Code, has certain powers as enumerated in that section:

“The supervisors of a soil conservation district have the following powers:

“(A) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed within the district, and to publish the results of such surveys, investigations, or research, provided that no district shall initiate any research program except in co-opera-

tion or after consultation with the Ohio agricultural experiment station ;

“(B) To develop plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, and to publish such plans and information ;

“(C) To carry out preventive and control measures within the district on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the occupier of such land ;

“(D) To co-operate or enter into agreements with any occupier of lands within the district in the carrying on of soil conservation operations within the district, subject to such conditions as the supervisors deem necessary ;

“(E) To accept donations, gifts, and contributions in money, service, materials, or otherwise, and to use or expend any of such contributions in carrying on its operations ;

“(F) To make, amend, and repeal rules to carry into effect its purposes and powers.”

Therefore, it is at once apparent that the position of a supervisor of a soil conservation district is a public office within the meaning of that term as set forth in *State ex rel. Milburn, et al. v. Pethtel, Auditor*, 153 Ohio St. 1, Paragraphs one and two of the syllabus :

“1. A public officer, as distinguished from an employee, is one who is invested by law with a portion of the sovereignty of the state and who is authorized to exercise functions either of an executive, legislative or judicial character.

“2. An appointee, upon whom the specific duties imposed by law are in relation to the exercise of the police powers of the state or in whom is vested independent power in the disposition of public property or authority to incur financial obligations upon the part of the county or state or to act in cases involving business or political dealings between individuals and the public, is thereby clothed with a part of the sovereignty of the state.”

It is also apparent that a member of the Board of County Commissioners holds a public office. The issue presented, therefore, is whether these two positions are legally compatible. I find no statutory prohibitions on this subject. However, I invite your attention to the case of *State, ex rel. Attorney General v. Gebert*, 12 O.C.C. (N.S.), 274, 275 :

“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 person to discharge the duties of both.”  
(Emphasis added)

This case states the judicially accepted common law principle on the compatibility of public offices. I consider the fact that the supervisor, as provided in Section 1515.08, *supra*, has such a control over the operation and function of soil conservation activities and expenditures that such position is legally incompatible with that of a member of the Board of County Commissioners, since funds for the use of the soil conservation district may be appropriated by the Board of County Commissioners. Furthermore, under the provisions of Section 1515.10, Revised Code, a tax may be levied by the Board of County Commissioners for the use of such district under the provisions of 1515.10, Revised Code:

“The board of county commissioners of each county in which there is a soil conservation district may levy a tax within the ten-mill limitation and may appropriate money from the proceeds of such levy or from the general fund of the county, which money shall be held in a fund for the credit of the district, to be expended for the purposes prescribed in section 1515.09 of the Revised Code upon the written order of a majority of the supervisors of the district. Amounts appropriated in excess of three thousand dollars for each employee must have the unanimous consent of the board. Any money appropriated for the general fund which remains unexpended at the end of the year shall revert to the general fund.”

It is to be further noted that the levy authorized by Section 1515.10, *supra*, is *within* the ten-mill limitation. Other subdivisions and taxing authorities must compete with each other for proportionate shares of the revenue rising from the constitutional ten-mill levy. By his position of authority and interest in the activities of the soil conservation district a member of a Board of County Commissioners might well find himself in a serious position of divided loyalties. This situation is an example of that which the rule recognized in *State, ex rel. v. Gebert, supra*, is designed to remedy by making it legally impossible for one person to hold two incompatible offices.

In this relation, I direct your attention to the following language from Opinion No. 1661, Opinions of the Attorney General for 1958, wherein the question of the compatibility of the office of city councilman and that of county civil defense director was considered. In the course of that opinion it was stated:

“I should like to direct your attention further to the provisions of Section 5915.11, Revised Code:

“ ‘*Each political subdivision may make appropriations for the payment of the expenses of its local organization for civil defense and for the payment of the expenses chargeable to such political subdivision by agreement or under regulations promulgated by the governor in any county wherein a county-wide civil defense organization has been established pursuant to section 5915.07 of the Revised Code.*’ (Emphasis added)

“Section 5915.01 (F), Revised Code, Provides by definition:

“ ‘(F) “Political subdivision” includes a county, township, city, or village.’ (Emphasis added)

“Although, as you point out in your inquiry, the director receives no compensation, the authority to appropriate municipal funds for use by the civil defense organization would allow the individual in question to take part in making appropriations to increase the funds available for his expenditure upon civil defense items. This power to control expenditures is clearly violative of the judicial pronouncement of incompatibility of offices found in *State, ex rel. Attorney General v. Gebert*, 12 O.C.C. (N.S.), 274, 275: \* \* \*

Under the provisions of Section 307.15, Revised Code, the Board of County Commissioners is authorized to enter into an agreement with a soil conservation district whereby the Board of County Commissioners is authorized to exercise any power, perform any function or render any service in behalf of the contracting district which such contracting district could exercise, perform or render. In this instance a direct conflict of interest could also be involved.

Therefore, it is my opinion and you are accordingly advised that the position of supervisor of a soil conservation district as provided in Chapter 1515., Revised Code, is incompatible with the position of a member of the Board of County Commissioners.

Respectfully,

MARK McELROY

Attorney General