

367

1. WELFARE DIRECTOR, COUNTY—MAY BE DESIGNATED EXECUTIVE SECRETARY OF COUNTY CHILD WELFARE BOARD—SECTION 3070-12 G. C.
2. SAME PERSON MAY HOLD POSITIONS, AT SAME TIME, ONE IN CLASSIFIED CIVIL SERVICE, STATE, ONE IN COUNTY UNCLASSIFIED CIVIL SERVICE—DUTIES OF TWO POSITIONS SHOULD IN NO WAY CONFLICT OR THOSE OF ONE BE A CHECK UPON THOSE OF THE OTHER OR SUBORDINATE IN ANY MANNER.

## SYLLABUS:

1. Under the express provisions of Section 3070-12 General Code, the county welfare director may be designated executive secretary of the county child welfare board.

2. The mere fact that a position in the state service is in the classified civil service and one in the service of a county is in the unclassified civil service does not in and of itself render such two positions incompatible, and consequently, if the duties of the two positions are in no way conflicting or those of one a check upon those of the other or subordinate thereto in any manner, the same person may lawfully hold both positions at the same time.

Columbus, Ohio, July 27, 1945

Hon. Frazier Reams, Director, Department of Public Welfare  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

"House Bill 418 which was passed by the General Assembly on June 28 provides for the establishment of a Child Welfare Board in each county of the state except where a County Department of Welfare administers children's services. The bill provides that the Board or Department shall appoint an Executive Secretary to carry out the responsibilities of the Board, and he shall not be in the classified civil service. The bill further provides that the County Welfare Director may serve as Executive Secretary of the Board.

We would like your opinion in respect to two questions which arise from the language of the bill:

(1) Since the County Welfare Director is in the classified civil service, may he perform the duties of Executive Secretary?

(2) Could a state employee who is in the classified civil service as a Child Welfare Worker be designated by the Child Welfare Board of any county to act as Executive Secretary?"

The section to which you refer in your inquiry is Section 3070-12, General Code, the first paragraph of which is amended by House Bill No. 418 to read as follows:

"The board, or the department which performs the duties and exercises the powers set forth in sections 3070-17 to 3070-20,

inclusive, of the General Code, shall designate an executive officer known as the executive secretary, who shall not be in the classified civil service. The county welfare director may serve as such executive secretary and it shall not be incompatible for the executive secretary and the superintendent of the children's home to be one and the same person."

Your first question is resolved by the specific wording of the statute which provides that the county welfare director may serve as such executive secretary. It must be kept in mind that the classified civil service has reference to the position and not to the person holding the position. Any impropriety in holding a position in the classified civil service and at the same time a position outside the classified civil service must come from an incompatibility of the positions or from some prohibition in the laws governing civil service.

Consideration of your second question involves two inquiries: first, whether the statute covers the situation as was true of the situation involved in your first question, and secondly, whether there is an incompatibility under the common law definition.

The case of *State, ex rel. Attorney General v. Gebert*, 12 O. C. C. (N. S.) 274, states the rule as follows:

"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."

Section 3070-13, General Code, states that the executive secretary of the county department of welfare or the child welfare board shall administer the work of the department or board subject to rules and regulations of the department or board. The pertinent sections of the Code do not disclose any patent incompatibility between the position of executive secretary and a state employe who is in the classified civil service as a child welfare worker. Furthermore, I am assuming, for the purposes of this opinion, that the duties as executive secretary will not interfere with the civil service employment of that person as a state employe in the classified civil service as a child welfare worker.

Therefore, in answer to your inquiry, it is my opinion :

1. Under the express provisions of Section 3070-12, General Code, the county welfare director may be designated executive secretary of the county child welfare board.

2. The mere fact that a position in the state service is in the classified civil service and one in the service of a county is in the unclassified civil service does not in and of itself render such two positions incompatible, and consequently, if the duties of the two positions are in no way conflicting or those of one a check upon those of the other or subordinate thereto in any manner, the same person may lawfully hold both positions at the same time.

Respectfully,

HUGH S. JENKINS

Attorney General