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COMPATIBLE EMPLOYMENT — ONE PERSON EMPLOYED AS
TEACHER AND AS JANITOR IN SCHOOL BUILDING — COM-
PENSATED FOR EACH EMPLOYMENT — NO IMPROPRIETY.

SYLLABUS:

There is no impropriety in one person being employed as a teacher and as a janitor in a school building and receiving compensation for each employment.

Columbus, Ohio, May 20, 1944

Hon. U. H. Buckey, Acting Prosecuting Attorney
Caldwell, Ohio

Dear Sir:

I have your recent communication which contains the following question:

“We wish to know whether or not a teacher in the grade school at a salary of \$900.00 per year can also be janitor of the same school and draw a salary of \$200.00 per year, and collect for both from the same fund.”

In determining whether two offices or employments may be held by the same person, the rule to be remembered is that such holding of positions is permissible unless a statute prohibits it, or unless the positions or employments themselves are incompatible.

In the question you raise two employments are concerned rather than two offices. The rule however as to the holding of employments is the same as the rule regarding the holding of more than one office.

An examination of the school laws discloses that there is no prohibition against the holding of the two employments in question. It appears likewise that there is no incompatibility between the two employments. The usual text applied to determine incompatibility of offices is stated in the case of *State, ex rel. Attorney General vs. Gebert*, 12 O. C. C. (N. S.) 274. In that case it is said that offices are incom-

patible "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."

In 32 O. Jur., 907, it is said:

"Sometimes it is said that incompatibility exists where the nature and duties of the two offices are such as to render it improper, from consideration of public policy for one incumbent to retain both * * *."

In the same volume of the same text at page 908, the following test to determine incompatibility is stated:

"One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other, * * * or in any way a check upon the other, or where a contrariety and antagonism would result in an attempt by one person to discharge the duties of both."

I have no special information regarding the duties of the two employments concerned, but there is nothing in the commonly understood duties of employments which, according to the tests above laid down, would cause them to be incompatible.

There was until the present session of the legislature a provision in the school laws which I believe clearly recognized that there was no impropriety in being employed both as a teacher and as a janitor. I am referring to former Section 7707, General Code, which was repealed by House Bill 217 of the 95th General Assembly. That section contained in part the following language:

"But no teacher shall be required by any board to do the janitor work of any school room or building, except as mutually agreed by special contract, and for compensation in addition to that received by him for his services as teacher."

I believe that the above is a clear recognition of the fact that there is no incompatibility between the two occupations. Although I am unable to find any analogous provision in the newly enacted school code,

I do not believe that the failure of the legislature to reenact a similar provision in the new law is any denial of the propriety of holding at once the two occupations of teacher and janitor.

You are advised that it is my opinion that there is no impropriety in one person being employed as a teacher and as a janitor in a school building and receiving compensation for each employment.

Respectfully,

THOMAS J. HERBERT
Attorney General