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COMPATIBLE — INCOMPATIBLE — MEMBER, BOARD OF ELECTIONS—OFFICE COMPATIBLE WITH DIRECTOR OF PUBLIC SAFETY OF A CITY—EACH OFFICE MAY BE HELD BY SAME PERSON AT SAME TIME.

SYLLABUS:

The office of a member of the Board of Elections is compatible with that of the Director of Public Safety of a city, and consequently both of said offices may be held by the same person at the same time.

Columbus, Ohio, January 5, 1948

Hon. Earl Henry, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir:

I am in receipt of your communication requesting my opinion, which reads as follows:

“Mr. A is a duly qualified and appointed member of the Board of Elections of Guernsey County. He has been selected as the chairman of said Board of Elections and is now the duly qualified and acting Chairman of said Board.

“He has been offered an appointment as Safety Director of the City of Cambridge by the newly elected Mayor who will enter upon the duties of his office in January, 1948.

“Will you kindly advise whether or not said office of Chairman of the Election Board is incompatible with said office of Safety Director of said City of Cambridge. Can Mr. A legally hold both offices concurrently?”

Sections 4785-6 through 4785-28, General Code, provide for the supervision of elections. The secretary of state appoints members of the board of elections in each county for a term of four years and until their successors have been appointed and have qualified. The board selects one of its number to be chairman. The duties of the board of elections are found in Section 4785-13, General Code, and consist generally in the supervision of elections within the county. Section 4785-16, General Code, provides that a candidate for office cannot be a member of the board

of elections. This statutory prohibition would not preclude the chairman of the board of elections holding the position of safety director of the city of Cambridge.

Sections 4367 through 4371, General Code, provide for the department of public safety. The director of said department is appointed by the mayor and is the head of the police and fire departments. The safety director also has the power to make contracts and is manager of certain of the city's institutions. There are no statutory prohibitions against the safety director holding other public office.

Public offices are incompatible when they are made so by statute or by reason of the common law rule of incompatibility. There are no statutory provisions precluding a member of the board of elections holding the position of a city safety director. The common law rule of incompatibility is found in 32 O. Jur., at page 908, which states:

“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, as an officer who presents his personal account for audit and at the same time is the officer who passes upon it, or is 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.”

The courts have expressed this test in *State v. Gebert*, 12 O. C. C. (N.S.), p. 274, and in *Mason v. State*, 58 O. S. 30.

The opinions of my predecessors have held that a member of the board of elections may hold other public office if it is physically possible to perform the duties of both positions. Your attention is directed to Opinions of the Attorney General for 1934, Vol. I, p. 414, which held that a member of the board of elections may at the same time hold the position of clerk of the city council. I cite this opinion with approval. Your attention is also directed to Opinions of the Attorney General for 1938, Vol. I, p. 440, and Opinions of the Attorney General for 1936, Vol. I, p. 347. It was held that a prosecuting attorney and a coroner, if not a candidate for office, could be a clerk or member of the board of elections, respectively.

The question as to whether or not it would be physically impossible to perform the duties of both positions has been held by my predecessors

to be a question of fact rather than of law. The opinions cited above support this conclusion, with which I am in complete accord.

It is my opinion, and you are informed, that the office of a member of the board of elections is compatible with that of the director of public safety of a city, and consequently both of said offices may be held by the same person at the same time.

Respectfully,

HUGH S. JENKINS,
Attorney General.