

OPINION NO. 81-010**Syllabus:**

The positions of full time local school principal and county commissioner are incompatible when it is physically impossible for one person to adequately perform the duties of both positions.

To: Michael E. Bernard, Hardin County Pros. Atty., Kenton, Ohio
By: William J. Brown, Attorney General, March 13, 1981

I have before me your request for an opinion on the question whether the positions of county commissioner and school principal are compatible. The principal is employed by a local school district, which is partially comprised of territory in the same county where the principal serves as commissioner.

March 1981

1979 Op. Att'y Gen. No. 79-111 sets out seven questions which must be analyzed in determining whether two positions are compatible. The questions are as follows:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

Questions number six and seven are of local concern, and I assume that there is no board of education regulation or county provision restricting the outside employment of a principal or county commissioner, respectively.

With respect to the first question, a school principal is in the unclassified civil service, see R.C. 124.11(A)(7), and thus is unaffected by R.C. 124.57, which has been held to prohibit an employee in the classified service from holding a partisan elective office.¹

As to the second question, I am aware of no statutory provision which would prohibit the holding of both positions of principal and county commissioner.

The remaining three questions—subordination, conflict of interest, and physical possibility—are part of the common law test of compatibility. See State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274 (Franklin County 1909); Op. No. 79-111. Each issue will be discussed in turn.

Counties and local school districts are separate political subdivisions. See R.C. 3313.17; R.C. 5705.01. See also 1955 Op. Att'y Gen. No. 5252, p. 240. Boards of county commissioners and school boards operate independently of one another, with distinct and parallel responsibilities and powers. It does not appear that an officer or employee of one subdivision would be subordinate to, or act as a check upon, an officer or employee of the other subdivision. See Pistole v. Wiltshire, 90 Ohio L. Abs. 525, 531, 189 N.E.2d 654, 657 (C.P. Scioto County 1961) ("[o]bviously one is not subordinate to the other because they are in entirely different fields"). See also 1972 Op. Att'y Gen. No. 72-066; 1961 Op. Att'y Gen. No. 1993, p. 26. Neither board oversees the operations of the other in any way.² County commissioners are elected by, and responsible to, the public. A principal is hired by, and responsible to, the board of education. Neither position is subordinate to,

¹See 1952 Op. Att'y Gen. No. 1116, p. 60. See also 1978 Op. Att'y Gen. No. 78-022.

²But cf. 1975 Op. Att'y Gen. No. 75-032 (concluding that, because a board of county commissioners had the authority to appropriate funds and make appointments to the county board of mental retardation, the commissioners acted as a check upon the board of mental retardation).

or a check upon, the other position. See Pistole v. Wiltshire. See also 1980 Op. Att'y Gen. No. 80-035.

In addition to the question of subordination, the common law test of compatibility provides that an individual may not accept dual employment which would subject him to a conflict of interest. "Any public officer owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public." 1970 Op. Att'y Gen. No. 70-168 (citation omitted). Although the board of commissioners and the school board do have the power to contract with each other, see R.C. 307.15; R.C. 3313.59, a principal does not have the decision-making authority or independent power to contract on behalf of the board of education, or even on behalf of his own school. See Pistole v. Wiltshire. Although, as county commissioner, a person does have the decision-making authority to enter into contracts, it appears that contracts with a board of education represent only a small portion of the commissioners' business, and there is only a speculative possibility that the commissioners and board of education will actually enter into a contract. This remote possibility of a conflict of interest is insufficient to render the positions incompatible. See Pistole v. Wiltshire; Op. No. 79-III. If a commissioner should have an interest in a contract before the board of commissioners because of his employment with the school board, he should, of course, abstain from voting on the contract. See Op. No. 79-III.

In addition to the potential problems raised by the school board's and county commissioners' ability to contract with each other, a board of county commissioners and a board of education are both taxing authorities of their respective subdivisions, R.C. 5705.01(A) and (C), and are responsible for adopting an annual tax budget, which is then presented to the county budget commission. R.C. 5705.28; R.C. 5705.31. The budget commission has the limited power to adjust each budget. R.C. 5705.32. These budget provisions place the members of the taxing authorities in an adversarial position, competing for a limited amount of money. It has been argued that a person who was a member of two taxing authorities would be faced with a conflict of interest while preparing the budget of each subdivision, since in both positions he would be attempting to obtain the greatest possible share of the available funds, at the expense of the other subdivisions. Consequently, the positions of county commissioner and school board member have been found to be incompatible. 1949 Op. Att'y Gen. No. 398, p. 131; 1945 Op. Att'y Gen. No. 104, p. 56. However, a school principal does not participate in preparing the school district's budget. Although the county commissioner is involved in preparing the county's budget, the possibility that he would not use his best judgment in preparing the budget merely because he was employed as a principal is too remote to render the positions incompatible. See 1959 Op. Att'y Gen. No. 1031, p. 708. This is especially true in light of the fact that while each taxing authority submits a tentative budget, it is the budget commission which actually allocates money to the various subdivisions after adjusting the rates of taxation, fixing the amount of taxes to be levied, and adjusting the estimates of balances and receipts from available sources. See R.C. 5705.27; R.C. 5705.32.

Although it appears that there is no conflict of interest between the positions of principal and county commissioner, a principal's specific duties, as set out by his contract and the board of education regulations, should be examined to determine whether the duties of a particular principal would conflict with those of a county commissioner. If an actual conflict of interest should arise between the positions, a person serving in both positions would be expected to appropriately remove himself from the matter.

Positions which involve no subordination or conflict of interest may still be found incompatible due to physical impossibility. In the past, questions of physical impossibility have been left to the individuals involved on the local level. This was done in the belief that these officials could more accurately foresee what demands each office would place on the officeholder. See Op. No. 79-III. However, in this instance, I believe it is apparent, from the facts you have presented, that it is

physically impossible for one person to carry out the duties of both a local school principal and a county commissioner. The position of local school principal is generally a full time employment, and you have informed me that the principal in question is employed on a full time basis. You note in your letter that the county commissioners meet at least one and one-half days per week and have special meetings on occasion. I assume these meetings are not always held after school hours or on the weekends, but that a county commissioner, to carry out his duties, would regularly have to attend meetings during the school day. Such an absence from school would make it impossible for the principal to carry out his duties full time. This is particularly true due to the nature of a principal's job. A principal can fulfill many of his duties at school only during the school day. Unlike some other occupations, a principal must deal with discipline and emergency situations as the need arises. Obviously, one purpose of having a principal is to insure that there is someone with authority to handle these difficult situations as they occur.

There is no statutory requirement as to the number of hours a principal must be at school. In order to determine what is full time employment, the general custom of the profession must be examined as to the length of a normal working day or week. 1974 Op. Att'y Gen. No. 74-004; 1959 Op. No. 1031. At a minimum, a full time principal is expected to be at school during the school day, five days a week. His presence may also be expected at staff meetings, school functions, and other activities which are held after school and on the weekends. A prior Attorney General concluded, in 1964 Op. Att'y Gen. No. 1421, at 2-374, that "[a] person employed full time may not be excused from the responsibilities of full time employment except as expressly provided by statute." There is no statute which excuses a local school principal from performing his full time responsibilities in order to function as a county commissioner. A principal who is receiving a salary for full time work must, therefore, fulfill the terms of his employment with the school board, and perform his duties as principal on a full time basis. See 1961 Op. No. 1993; 1956 Op. Att'y Gen. No. 7462, p. 855. Thus, on the facts that you have presented, I conclude that a full time local school principal may not take time from his school duties to serve as a county commissioner.³

As noted above, the precise relationship between a principal and school board is set by written contract. R.C. 3319.02; R.C. 3319.08. A board of education must also adopt rules and regulations for the government of its employees, including teacher leave. R.C. 3313.20; R.C. 3319.08. In addition, a board of education has the power to enter into a collective bargaining agreement or "master contract" with an employee professional association. See Dayton Classroom Teachers Association v. Dayton Board of Education, 41 Ohio St. 2d 127, 323 N.E.2d 714 (1975). Although a board of education has no authority to excuse a full time employee from his duties for a time during the regular working week in order for the employee to attend a commissioners' meeting, the board could arrange, through contract or regulation, to employ a part time principal at part time pay. See 1964 Op. No. 1421; 1956 Op. No. 7462. Whether it would be physically possible for a part time principal to also serve as a county commissioner is a question of fact to be determined on the basis of the particular responsibilities involved.

³ One problem which could potentially arise if a principal were to be absent from school during the week on a regular basis to attend commissioners' meetings concerns computation of service time for determining eligibility for a continuing contract. See R.C. 3319.09(B); R.C. 3319.11. See also R.C. 3319.08; R.C. 3319.09(C). If a teacher or principal does not regularly work for a full school day, that day cannot be counted as one of the 120 days per year needed to attain continuing contract status. If a teacher or principal does not work a five-day week during the year, that year cannot be counted as a full year for purposes of attaining continuing contract status. See 1974 Op. Att'y Gen. No. 74-004; 1964 Op. Att'y Gen. No. 1421, p. 2-373; 1951 Op. Att'y Gen. No. 717, p. 453.

In conclusion, it is my opinion, and you are advised, that the positions of full time local school principal and county commissioner are incompatible when it is physically impossible for one person to adequately perform the duties of both positions.