

Note from the Attorney General's Office:

1961 Op. Att'y Gen. No. 61-2206 was questioned by
1979 Op. Att'y Gen. No. 79-111.

2206

1. THE POSITION OF CLERK OF A BOARD OF EDUCATION OF A LOCAL SCHOOL DISTRICT IS INCOMPATIBLE WITH THE POSITION OF MEMBER OF THE BOARD OF HEALTH OF A GENERAL HEALTH DISTRICT—

2. A PERSON MAY NOT SIMULTANEOUSLY SERVE AS A MEMBER OF A COUNTY BOARD OF EDUCATION AND AN EMPLOYEE OF THE BOARD OF HEALTH OF A GENERAL HEALTH DISTRICT—§§3313.22, 3709.02, 3709.03, 3709.04, 3709.22, 3313.01, R.C.

SYLLABUS:

1. The position of clerk of a board of education of a local school district, elected pursuant to Section 3313.22, Revised Code, is incompatible with the position of member of the board of health of a general health district, appointed pursuant to Sections 3709.02, 3709.03, and 3709.04, Revised Code, as the duty of the board of health under Section 3709.22, Revised Code, to inspect schools in the district, creates a conflict of interest between such positions.

2. For the same reason, one person may not simultaneously serve as member of a county board of education, elected pursuant to Section 3313.01, Revised Code, and as an employee (sanitarian) of the board of health of the general health district of the county.

Columbus, Ohio, May 24, 1961

Hon. Robert L. Perdue, Prosecuting Attorney
Ross County, Chillicothe, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I request your opinion as to whether the following positions are compatible:

“1. Clerk of a local school district board of education and member of a county board of health.

“2. Member of a county board of education and a county sanitarian (non civil service employee of a county board of health).”

While your first question refers to a county board of health, I assume that you are referring to the board of health of a general health district.

Under Section 3709.01, Revised Code, a general health district consists of the townships and villages in each county; and a five-member board of health for the district is appointed pursuant to Sections 3709.02, 3709.03, and 3709.04, Revised Code.

As to the duties of a board of health, Section 3709.22, Revised Code, reads in part:

“Each board of health of a city or general health district shall study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The board may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children’s homes, infirmaries, and county homes, and other charitable, benevolent, and correctional institutions. The board may also provide for the inspection of dairies, stores, restaurants, hotels, and other places where food is manufactured, handled, stored, sold, or offered for sale, and for the medical inspection of persons employed therein. The board may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease.

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Also, Section 3709.21, Revised Code, provides:

“The board of health of a general health district may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. * * *”

The clerk of a board of education is elected by the board of education pursuant to Section 3313.22, Revised Code. Under Section 3313.26, Revised Code, such a clerk is required to record the proceedings of board meetings. Under Section 3313.261, Revised Code, the clerk is required to notify the board of elections of all changes in the boundaries of a school district. Under Sections 3313.27, 3313.30, 3313.21 and 3313.22, Revised Code, the clerk is given certain accounting duties as to the funds of the district. As stated in 36 Ohio Jurisprudence, Section 127, page 160:

“The clerk is but the bookkeeper of the board of education, having charge of its records and accounts, and his duties are mostly of a clerical and ministerial character.”

On reviewing the provisions of law pertaining to a member of a board of health of a general health district and to a clerk of a local school district board of education, I am unable to find any prohibition against a person serving as a member and serving at the same time as such a clerk. If the offices are to be found incompatible, therefore, it must be as a result of the common law rule of incompatibility. Such rule is set forth in the case of *State, ex rel. Attorney General v. Gebert*, 12 C.C. (N.S.) 274, at page 275, 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.”

Of interest in the instant question is the syllabus of Opinion No. 787, Opinions of the Attorney General for 1951, page 520, reading :

“The office of member of a county health board and that of member of a local board of education are incompatible and a member of a local board of education may not serve as a member of a county board of health.”

That opinion was based on the fact that under Section 3709.22, *supra* (then Section 1261-26, General Code), the board of health of a general health district has the responsibility of inspecting school premises and, under Section 3709.21, *supra* (then Section 1261-42, General Code), has the general power to make orders as it deems necessary for the prevention or restriction of disease and the prevention, abatement or suppression of nuisances. At page 522 of the opinion, it is stated :

“This power of inspection of schools would seem to create a conflict of interest which would render freedom of action on the part of a member serving on both boards difficult, if not impossible.”

The 1951 opinion dealt, of course, with a *member* of a local board of education, while the present question is concerned with the *clerk* of a local board of education. But it must also be remembered that the clerk of the board of education is elected by the members of the board of education (Section 3313.22, Revised Code), and the argument must therefore arise that, in performing his duty as to inspection of schools, the board of health member could be influenced by his desire to retain his position as clerk of the board of education. Thus, while the actual duties of the clerk are ministerial, being of an accounting and bookkeeping nature, and do not

give the clerk any control over the policy of the board of education as to schools in the district, I am of the opinion that a conflict of interests could very well arise between the two positions. Accordingly, I conclude that the reasoning of Opinion No. 787, *supra*, is applicable to the present question and that the position of clerk of a local board of education is not compatible with the position of member of the county board of health.

Coming to your second question, Section 3313.01, Revised Code, provides for a five-member board of education in a county school district. Under Section 3313.20, Revised Code, the board of education has the duty to "make such rules and regulations as are necessary for its government and the government of its employees and the pupils of the schools." The general powers and duties of a board of health were noted earlier.

I have been unable to find any express statutory prohibition against a person serving simultaneously as a member of a county board of education and as an employee (sanitarian) of a board of health of a general health district. Accordingly, it appears necessary to again consider the applicability of the common law rule as expressed in *State, ex rel. Attorney General v. Gebert, supra*.

As to one position being subordinate to or a check upon the other, it is again noted that one of the duties of the board of health of a general health district is to inspect the schools of the district (Section 3709.22, *supra*). Also, such a board of health may make such rules and regulations as are necessary for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances; and these rules and regulations may be applied to schools in the district. Further, in inspecting schools and in ascertaining whether its rules are being followed, the board of health must necessarily make use of its employees, and it would appear that employees acting as sanitarians would be so used.

While you do not state whether the employee in question would actually inspect schools, it is at least highly possible that his duties would encompass such inspections. In any event, inspections of schools are part of the duties of the board of health and are carried out by its employees. Should the inspection be made by an employee who is also a member of the board of education there would appear to be a conflict of interest which would render freedom of action on the part of such person difficult, if not impossible. As the board of health of a general health district has

the duty of inspecting schools under the jurisdiction of the county board of education, such a conflict of interest appears to exist in the case at hand. I conclude, therefore, that a person may not simultaneously serve as a member of a county board of education and as an employee (sanitarian) of the board of health of the general health district of the county.

In conclusion, therefore, it is my opinion and you are advised :

1. The position of clerk of a board of education of a local school district, elected pursuant to Section 3313.22, Revised Code, is incompatible with the position of member of the board of health of a general health district, appointed pursuant to Sections 3709.02, 3709.03, and 3709.04, Revised Code, as the duty of the board of health under Section 3709.22, Revised Code, to inspect schools in the district, creates a conflict of interest between such positions.

2. For the same reason, one person may not simultaneously serve as member of a county board of education, elected pursuant to Section 3313.01, Revised Code, and as an employee (sanitarian) of the board of health of the general health district of the county.

Respectfully,
MARK McELROY
Attorney General