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INCOMPATIBLE OFFICE—COUNTY COMMISSIONER—MEMBER, BOARD OF EDUCATION OF EXEMPTED VILLAGE SCHOOL DISTRICT—ONE AND SAME PERSON MAY NOT HOLD BOTH OFFICES AT SAME TIME.

## SYLLABUS:

The office of county commissioner is incompatible with that of a member of the board of education of an exempted village school district, and it is therefore not possible under the law for one and the same person to hold both offices at the same time.

Columbus, Ohio, April 20, 1949

Hon. Harvey E. Hyman, Prosecuting Attorney  
Paulding County, Paulding, Ohio

Dear Sir:

Acknowledgment is made of your communication requesting an opinion from this office. Your letter reads as follows:

“At the last election we had a new County Commissioner voted into office. This Commissioner is also a member of the School Board of Paulding Village. There has been a request made to me to ascertain as to whether these offices are incompatible or not.

“I note in the Opinions of the Attorney General, No. 2975 in the 1928 edition of the Opinions of the Attorney General that

the office of County Commissioner and a member of a rural school board are incompatible which was later confirmed in the Opinions of the Attorney General of 1940. However, it does not go into the matter as to whether or not the offices of the county commissioners and a Village School Board in the same county are incompatible."

Section 4830, General Code, relates to the classification of school districts, and provides:

"The school districts of the state shall be styled, respectively, city school districts, local school districts, exempted village school districts, county school districts, joint high school districts and joint vocational school districts."

The village of Paulding comprises what is styled in the above quoted section an *exempted* village school district. Therefore, your question is whether or not the offices of county commissioner and member of the board of education of an exempted village school district may be held by one and the same person.

The question of compatibility of offices has been the subject of numerous opinions of this office, and, as pointed out in your letter, it was held in Opinions of the Attorney General for 1940, Vol. II, page 1036, Opinion No. 3088, that the offices of county commissioner and member of a board of education of a *rural* school district are incompatible and cannot be held by the same person. It is pointed out that rural school districts no longer exist. That classification, which was contained in Section 4679, General Code, was not carried over to Section 4830, General Code, quoted above, when the laws dealing with public schools were recodified and revised in 1943 by the Ninety-fifth General Assembly (120 O. L. 475).

There is no express statutory or constitutional prohibition against one person holding two offices here in question. However, even in the absence of such express provision, it seems to be a well settled rule of the common law that a public officer cannot hold two offices at the same time which are in their nature incompatible. An examination of the court decisions of the various states shows that the courts, when it comes to stating what constitutes incompatibility, are prone to avoid the formulation of a general definition and content themselves with discussions of specific cases and particular facts which have been looked on as creating incompatibility. They have laid down certain rules and tests for determining the matter, but it is difficult to find one sufficiently clear to be decisive in every case. See

generally 2 Annotated Cases 380, et seq.; see also 42 Am. Jur., Public Officers, Sec. 70 et seq. One of the rules laid down by a group of cases is that offices are generally considered incompatible where the duties and functions of each are inherently inconsistent and repugnant so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially and efficiently the duties of both offices, considerations of public policy render it improper for one incumbent to retain both offices.

This, then, leads to a consideration of the duties and functions of the two offices in question. In Section 5625-1 of the General Code (Uniform Tax Levy Law) the following definitions are found in that section, as amended effective September 24, 1947:

“(a) ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation or township in the state.

\* \* \* “(c) ‘Taxing authority’ or ‘bond issuing authority’ shall mean in the case of any county, the county commissioners; in the case of a municipal corporation, the council or other legislative authority of such municipal corporation; in the case of a school district, the board of education; and in the case of a township, the township trustees. \* \* \* ”

It is thus seen that both an exempted village school district and a county are subdivisions of the state and the taxing authorities of these subdivisions are the board of education and the county commissioners, respectively. Under the provisions of Section 5625-20, General Code, the taxing authorities of these subdivisions are under a duty to prepare budgets for their respective subdivisions each year and file them with the county auditor, who in turn presents them to the budget commission of the county (Sections 5625-22 and 5625-23, General Code.) In connection with the preparation of such budgets or the possible revision thereof, it frequently happens that the taxing authorities of these subdivisions appear before the budget commission, or possibly the Board of Tax Appeals if the budget is appealed, to present arguments relative to adjustments or revisions benefiting their districts, and it may well be that such adjustments or revisions contended for in connection with one subdivision would be detrimental to the other subdivision, and where presented by one person there may be a conscious or unconscious bias or prejudice. There probably are other situations where the duties and functions of these offices would be in

conflict, however the conclusion seems inescapable that on the basis of taxing duties and functions alone these offices are incompatible.

Therefore, in view of the foregoing, and in specific answer to your question, you are advised that the office of county commissioner is incompatible with that of a member of the board of education of an exempted village school district, and it is therefore not possible under the law for one and the same person to hold both offices at the same time.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.