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INCOMPATIBLE OFFICE—TOWNSHIP TRUSTEE AND MEMBER OF LOCAL BOARD OF EDUCATION—LOCATED WITHIN TOWNSHIP—MAY NOT BE SIMULTANEOUSLY HELD BY SAME PERSON.

SYLLABUS:

The office of township trustee and the office of a member of a local board of education located within such township are incompatible offices and may not be held by the same person simultaneously.

Columbus, Ohio, September 8, 1949

Hon. Harold K. Bostwick, Prosecuting Attorney
County of Geauga, Chardon, Ohio

I have before me your request for my opinion, which request reads as follows:

“Chardon Local Board of Education has members on the Board which are also Township Trustees and they have asked me if holding the two offices is compatible or incompatible.

“In checking the Bureau of Inspection and Supervision of Public Offices of March 31, 1935, by circular No. 801, I find that in 1909-10, Page 677, the Attorney General ruled that a member of a rural Board of Education and Township Trustee were compatible. However, in the same circular for the year 1910-11 at Page 909, the Attorney General ruled ‘that a member of the Board of Education and a Township Trustee were incompatible.’

“Will you, therefore, kindly advise me your opinion as to whether or not a member of the Chardon Local Board of Education and also being a Township Trustee are compatible or incompatible officers.”

The problem of compatibility of offices has been the subject of several opinions of the Attorney General. In the Annual Report of the Attorney General for the period January 1, 1909 to January 1, 1910, at page 677, we find an opinion holding that the office of township trustee and member of the township board of education are compatible offices. However, in the Annual Report of the Attorney General for the period January 1, 1910 to January 1, 1911, we find at page

909 an opinion which reaches the exact opposite result. In a later opinion No. 2, Opinions of the Attorney General for 1927, it was held that the office of township trustee and member of the township board of education were incompatible and could not be held by the same person. With the two later opinions I am in agreement.

There is no statutory prohibition against the same person holding simultaneously the office of township trustee and member of a local board of education within such township. Therefore, we must determine whether or not the two offices are incompatible at common law. Probably the most oft quoted case establishing the rule of incompatibility in Ohio is *State ex rel. Attorney General v. Gobert*, 12 O.C.C., NS, 274. See 32 O. Jur. 907 and 909. The rule laid down by the above case at page 275 is:

“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.”

Further, under the 1910 and 1927 opinions cited above, if the duties of the two offices may become adversary in nature, they are incompatible. See also Opinion No. 1578, Opinions of the Attorney General for 1939, Vol. III.

Our question reduced to its simplest terms is: Are the offices of township trustee and member of a local school board in any way subordinate or adversary to each other?

In Opinion No. 2, Opinions of the Attorney General for 1927, *supra*, there is the following statement:

“You will note that in the preparation of annual budgets, the disposition of public moneys as between the school district and the township and the fixing of tax levies, etc., as provided by General Code Section 5649-1, et seq., the result might be that the two boards would be placed in the position of adversaries.”

At the present time under the provisions of the Uniform Tax Levy Law, Section 5825-1 et seq., General Code, we find the following definition of the word “subdivision”:

Section 5625-1.

“(a) ‘Subdivision’ shall mean any county, *school district*, except the county school district, municipal corporation, *township*, township fire district or township waste disposal district in the state.” (Emphasis added.)

Thus the local school board of education and the township are both included in the definition of the word "subdivision." Under Section 5625-1 et seq., General Code, it is entirely possible that the two subdivisions may find themselves as adversaries in their need for funds.

Therefore, it is my opinion that the position of township trustee and member of a local school board located in such township are incompatible and may not be held by the same person.

Respectfully,

HERBERT S. DUFFY,
Attorney General.