

1993

A PERSON MAY AT THE SAME TIME SERVE AS MAYOR OF A CITY AND AS TEACHER IN THE CITY SCHOOL DISTRICT PROVIDING IT IS PHYSICALLY POSSIBLE FOR ONE PERSON TO DISCHARGE THE DUTIES OF BOTH POSITIONS—§733.02, R.C.

SYLLABUS:

A person may at the same time serve as mayor of a city and as teacher in the city school district providing it is physically possible for one person to discharge the duties of both positions.

Columbus, Ohio, February 6, 1961

Hon. Kenneth Koch, Prosecuting Attorney  
Van Wert County, Van Wert, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"We have a situation existing in our City which needs legal clarification from your office. One of our local school teachers desires to become a candidate for the office of Mayor of the City of Van Wert, Ohio. In order to correctly advise the Board of Elections, I would appreciate an answer to the following question:

"Can a full time teacher of a City School System be a candidate for Mayor of said City, and if elected serve in such capacity and receive a salary as Mayor at the same time he is receiving his full salary as teacher?"

Section 733.02, Revised Code, provides that a mayor of a city shall be elected for a term of two years and that he shall be an elector of the city, and I am unable to find any statutory restriction precluding a person who is serving as mayor from serving in another office at the same time.

Teachers in a city school system are hired by the board of education of the city school district (Section 3319.09, *et seq.*, Revised Code) and such a district is a political subdivision of the state, separate and apart from the city itself (Section 3313.17, Revised Code; Opinion No. 5252, Opinions of the Attorney General for 1955, page 240). I have found no statutory bar to a person who is a teacher serving as mayor of a city.

Further, since the position as teacher is in the "unclassified" service, Section 143.41, Revised Code, forbidding "classified" employees from engaging in political activity, does not apply here.

In the absence of statutes on the subject it is necessary to look to the common law to determine if incompatibility exists between the two positions. The generally accepted rule in this regard is that found in *State, ex rel. v. Gebert*, 12 C.C. (N.S.) 274, at 275, and reading:

"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."

I see no way in which either of these offices could be considered to be subordinate to, or in any way a check upon, the other. Whether it is physically possible for one person to discharge the duties of both is, however, a question of fact.

As to a teacher receiving his full salary at the same time he is receiving a salary as mayor, such teacher must, of course, fulfill the terms of his employment with the school board in order to be compensated therefor. Thus, if the teacher serves the hours required by the terms of employment, he is entitled to receive the salary specified by such terms.

Answering your specific question, therefore, it is my opinion and you are advised that a person may at the same time serve as mayor of a city and as teacher in the city school district providing it is physically possible for one person to discharge the duties of both positions.

Respectfully,

MARK McELROY

Attorney General