

I can find no provision of the statute expressly prohibiting a deputy clerk of courts from being employed in the capacity of stenographer to the prosecuting attorney.

The common law rule of incompatibility as stated by the Circuit Court in the case of *State ex rel. vs. Gebert*, 12 C. C. (N. S.) 274, is 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.”

From the above it will be seen that no person can hold two or more positions unless the duties of the several positions can be properly filled by persons holding the same. Also that no person under any condition can hold two positions when one is subordinate to or in any way a check upon the other, unless specifically authorized by statute.

I know of no way in which either of the offices mentioned in your communication would be subordinate to or a check upon the other, and if as set out in your communication the positions can both be filled by one person without in some degree neglecting the duties of the other, I can see no reason why the two positions mentioned may not be held by the same person.

You are therefore advised that a deputy clerk of courts may act as stenographer to the prosecuting attorney when the same can be done without in some degree neglecting the duties of the other position.

Respectfully,
C. C. CRABBE,
Attorney-General.

3718.

BOARDS OF EDUCATION—TERMS OF CONTRACTS FOR FURNISHING TEXT BOOKS DISCUSSED.

SYLLABUS:

Notwithstanding boards of education contract with local retail dealers to furnish school text books as provided by sections 7714 and 7715 G. C., such boards would still have authority to pay the transportation on such books, but if so agreed under the terms of such contract, same shall be paid by the local dealer. However, when such transportation charges are paid by the local board, same cannot be added to the cost of the books when purchased by the pupils, for the reason that such text books must always be sold to the pupils at the price paid the publisher and not to exceed ten per cent added.

COLUMBUS, OHIO, October 18, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of recent date in which you request my formal opinion on the following inquiry:

“Section 7714 G. C., as amended 111 O. L. 404, requires that boards of education in the handling of text books must pay all charges for the transportation of the books out of the school contingent fund, and Section 7715 G. C. provides that such books must be sold to the pupils of school age in the district, at the price paid the publisher, and not to exceed ten per cent therefor added. Said Section 7715 G. C. further provides that boards of education also may contract with local retail dealers to furnish such books at prices above specified.

Question 1: When boards of education contract with local retail dealers to furnish such books, who is to pay the transportation charges on such books, may the boards of education still pay same?

Question 2. If such transportation charges are not legally payable by boards of education when local dealers under contract with such boards handle the text books, may such charges be added to the cost of the books purchased by the pupils?"

Section 7714 G. C. as amended in 111 O. L. 404, provides as follows:

"Each board of education shall cause it to be ascertained, and at a regular meeting determine which, and the number of such books the schools under its charge require.

The clerk or, in city school districts having a director of schools, such director at once shall order the books so agreed upon of the publisher, who on the receipt of such order must ship them to the clerk or director without delay. He forthwith shall examine the books, and, if found right and in accordance with the order, remit the amount to the publisher. The board of education must pay all charges for the transportation of the books out of the school contingent fund. But if such boards of education at any time can secure of the publishers books at less than such maximum price they shall do so, and without unnecessary delay may make effort to secure such lower price before adopting any particular text book."

Section 7715 G. C. provides as follows:

"Each board of education shall make all necessary provisions and arrangements to place the books so purchased within easy reach of and accessible to all the pupils in their district. For that purpose it may make such contracts, and take such security as it deems necessary, for the custody, care and sale of such books and accounting for the proceeds; but not to exceed ten per cent of the cost price shall be paid therefor. Such books must be sold to the pupils of school age in the district, at the price paid the publisher, and not to exceed ten per cent therefor added. The proceeds of sales shall be paid into the contingent fund of such district. Boards also may contract with local retail dealers to furnish such books at prices above specified, the board being still responsible to the publishers for all books purchased by it."

Section 7714 G. C. supra, provides, among other things, that upon receipt of a shipment of text books by a board of education or its representative, such books shall be examined, and if found right and in accordance with the order, remit the amount to the publisher, and further provides that "the board of education must pay all charges for the transportation of the books out of the school contingent fund." This provision clearly authorizes boards of education to pay all transportation charges on text books.

Section 7715 G. C. supra, provides that "boards of education may enter into contracts for the custody, care and sale of the text books so purchased, and may pay for such service not to exceed ten per cent of the cost price of said text books;" and further provides that such books must be sold to the pupils at the price paid the publisher and not to exceed ten per cent added.

The last sentence of this section provides that "boards also may contract with local retail dealers to furnish such books at prices above specified, the board being still responsible to the publisher for all books purchased by it."

In view of this last provision it is clear that boards of education may contract with local retail dealers to furnish text books. Such contract, however, must always be subject to the limitation that such books must be provided "at prices above specified," to-wit, the price fixed by the following language: "the price paid the publisher and not to exceed ten per cent added."

The board of education as one of the terms of such contract may or may not require the local dealer to pay the transportation charges. In the event that no local dealer will agree to a contract whereby he is to pay the transportation charges, the board of education would still have authority to pay same. Under either arrangement the pupil must not be required to pay more than the price paid the publisher and not to exceed ten per cent added.

Therefore, in answer to your specific inquiries you are advised that when boards of education contract with local retail dealers to furnish text books as provided by sections 7714 and 7715 G. C., such boards would still have authority to pay the transportation charges, but if so agreed under the terms of such contract, same shall be paid by the local dealer.

When such transportation charges are paid by the local dealer, same cannot be added to the cost of the books when purchased by the pupils, for the reason that such books must always be sold to the pupils at the price paid the publisher and not to exceed ten per cent added.

Respectfully,
C. C. CRABBE,
Attorney-General.

3719.

SCHOOLS—AUTHORITY OF BOARDS OF EDUCATION TO ASSIGN PUPILS
TO OTHER DISTRICTS DISCUSSED—CAPACITY OF SCHOOL BUS.

SYLLABUS:

1. *The board of education of a given district may contract with the board of education of another district for the admission of pupils into the schools of such other districts, but such contract does not effect an assignment of the pupils of the first mentioned district to a school district outside of the district of their residence, and said pupils cannot thereby be required or compelled to attend the school in the adjacent district.*

2. *The regulation of the number of children that may be conveyed in a school bus is largely within the discretion and control of the board of education making the contract for the transportation of pupils.*

COLUMBUS, OHIO, October 18, 1926.

HON. HUGH BINGHAM, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—This will acknowledge receipt of yours of recent date in which you request my opinion on the following statement of facts:

"It is desired by the board of education of one of our rural districts in this county to assign certain pupils living far away from their centralized school to a school in the adjacent district, which is outside of the county school district. Their reason for wishing so to do is that the trucks of the adjacent school district pass by the residences of said pupils and they can contract on a very reasonable basis with the board of the adjacent district for tuition and transportation, such contract being authorized by section 7734 of the General