

OPINION NO. 1305**Syllabus:**

The office of county treasurer is incompatible with the office of treasurer of a community college district created by and operating under Chapter 3354, Revised Code, and the two positions may not be held by the same person at the same time.

To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, August 19, 1964

I have before me your letter which in essence asks for my opinion as to whether or not the county treasurer may also hold the office of the treasurer of a community college district created under the authority of Section 3354.02, Revised Code.

There is no general or specific statutory provision which expressly prohibits the county treasurer from holding the office of treasurer of a community college district. In the absence of such a statutory provision the common law test of incompatibility must be applied. That test is stated in State ex rel. Attorney General v. Gebert, 12 C. C. (N.S.), 274,

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."

The offices in question, then, must be examined to determine if one is superior to or in any way a check upon the other.

As a result of the power to tax and to issue bonds conferred upon a community college district by Sections 3354.12 and 3354.11, Revised Code respectively, such district becomes a "taxing unit" as that term is defined in Section 5705.01, Revised Code. Briefly stated, Section 5705.28, Revised Code, provides that such taxing unit shall by July 15 of each year adopt and submit to the county budget commission via the county auditor a tax budget for the following fiscal year. The county treasurer is made a member of the budget commission by Section 5705.27, Revised Code. One of the duties of the county budget commission as dictated by Section 5705.31, Revised Code, is as follows:

" * * * * * "

"The commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve the following levies without modification:

"(A) All levies in excess of the ten-mill limitation;

" * * * * * "

In construing the meaning of the phrase "properly authorized", as employed in the above quoted section, the Ohio Supreme Court has held that:

" * * * * * "

"'Properly authorized' * * * means that such tax is one which the taxing authority had the power to impose, either by its own action or by vote of the people, and that the enactment of the measure imposing the tax was in compliance with statutory requirements." State ex rel. Board of County Commissioners of Lucas County v. Austin, 158 Ohio St., 476, 480.

As can be readily seen, the mandatory obligation of the county budget commission to approve tax levies outside the ten-mill limitation imposed by the community college district is conditioned upon the former's determination that such levy is properly authorized in accordance with the statutory authority and procedure contained in Section 3354.12, Revised Code. To this extent then, the county budget commission and the county treasurer as a member thereof performs a check upon and is superior to the board of trustees of a community college district.

Although the treasurer of the community college district may not be a member of its board of trustees (Section 3354.06, Revised Code) he most certainly would be intimately involved in and partly responsible for the preparation, submission, and support of such a budget as the district's treasurer and fiscal officer. Consequently, the county treasurer as a member of the county budget commission would be called upon to review and determine the validity of a tax levy, the proceeds of which would be administered by the treasurer of the community college district and therefore would be performing a check upon and be superior to the treasurer of the community college district. Further, in reviewing the tax levy proposed by the community college district, it would be incumbent upon the county treasurer to disapprove such a levy if it was not properly authorized while at the same time he would be bound by loyalty to the board of trustees of the community college district as its treasurer and fiscal officer to support the tax levy. It is obvious that this is the kind of situation which the common law of incompatibility seeks to avoid.

Therefore, it is my opinion and you are so advised that the office of county treasurer is incompatible with the office of treasurer of a community college district created by and operating under Chapter 3354, Revised Code, and the two positions may not be held by the same person at the same time.