

OPINION NO. 92-055

Syllabus:

The positions of member of a board of education of a county school district with more than one local school district and substitute teacher in a local school district that is located within the county school district are incompatible, whether or not the individual was employed as a substitute teacher prior to being elected or appointed to the board of education of the county school district.

To: Keith A. Shearer, Wayne County Prosecuting Attorney, Wooster, Ohio
By: Lee Fisher, Attorney General, December 29, 1992

You have requested an opinion concerning the compatibility of the positions of member of the board of education of a county school district and substitute teacher in a local school district. Specifically, you ask:

- [1.] May a member of a county board of education be employed by a local school district within that county as a substitute teacher?
- [2.] If the first question is answered in the negative, would it make any difference if the board member had been on the county substitute teacher list prior to assuming office as a member of the county board of education?

Information provided indicates that the county school district is not a county school financing district created under R.C. 3311.50 and that the county school district has more than one local school district within its territory.¹

I. Duties of a Member of a Board of Education of a County School District

A county school district is a service support organization which does not ordinarily operate schools. See Robert T. Baker & K. Carey, *Baker's 1991-92 Handbook of Ohio School Law* 11 (1991); see, e.g., R.C. 3311.50; R.C. 3313.843; R.C. 3317.11(A). But see R.C. 3311.051 (when there is a single local school district within a county school district, the county board of education is vested with all the powers and duties of the local board of education, including the management and control of all the public schools within its jurisdiction); R.C. 3313.85 (a county board of education acts as a local board of education and performs the local board's duties when the local board fails to perform its duties). Pursuant to R.C. 3313.17, a county board of education is

a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

See also R.C. 3313.36; R.C. 3313.41. A county board of education is statutorily required to prescribe a graded course of study for the local school districts, R.C. 3313.60, prepare annually a budget of operating expenses for the ensuing school year for the county school district, R.C. 3317.11, issue certificates of qualification to drivers employed in local school districts or driving buses operated pursuant to contract in such districts, R.C. 3327.10, and adopt lists of textbooks for use in local school districts, R.C. 3329.08. In addition, a county board of education may, by resolution, propose the transfer of a part or all of one or more local school districts to another local school district or districts within the county school district, R.C. 3311.22, the transfer of a part or all of one or more local school districts within the county to an adjoining county school district or to an adjoining city or exempted village school district, R.C. 3311.231, and the creation of a new local school district from one or more local school districts or parts thereof, including the creation of a local district with noncontiguous territory from one or more local school districts if

¹ When there is only one local school district within a county school district, "there shall be only one board of education which shall be the county board of education which shall have all the powers and duties of a local board of education in addition to those of a county board." R.C. 3311.051. Because the county school district in question contains more than one local school district, this opinion specifically addresses the compatibility of a member of a board of education of a county school district with more than one local school district and a substitute teacher employed by one of the local school districts within the county school district.

one of those districts has entered into an agreement under R.C. 3313.42, R.C. 3311.26.

II. Duties of a Substitute Teacher

A substitute teacher is a contractual employee of a board of education. See R.C. 3319.08; *Crawford v. Board of Educ.*, 6 Ohio St. 3d 324, 453 N.E.2d 627 (1983); 1970 Op. Att'y Gen. No. 70-042; 1968 Op. Att'y Gen. No. 68-120. No substitute teacher may be employed by a local school district unless nominated by the superintendent of schools of the county school district of which such local school district is a part, R.C. 3319.07, although the board of education of a local school district may, after considering two nominations by the county superintendent, reemploy a substitute teacher, *id.* A substitute teacher's duties include those set forth in the contract of employment, R.C. 3319.08, and those implied as being reasonably necessary to discharge the substitute teacher's primary duty of educating students, see 1989 Op. Att'y Gen. No. 89-069 at 2-315.

III. Compatibility Analysis

1979 Op. Att'y Gen. No. 79-111 set forth seven questions for determining whether an individual may simultaneously hold two public positions. Two positions are incompatible if, *inter alia*, one position is subordinate to or in any way a check upon the other, or if an individual serving in both positions would be subject to a conflict of interest. See 1984 Op. Att'y Gen. No. 84-003; 1983 Op. Att'y Gen. No. 83-070. An examination of the duties of the positions at issue here indicates that the position of member of a board of education of a county school district would be a check upon the position of substitute teacher in a local school district that is located within the county school district and that an individual occupying both positions would also be subject to an impermissible conflict of interest.

A. Subordination

There are at least two instances in which the position of member of a board of education of a county school district acts as a check upon the position of substitute teacher in a local school district that is located within the county school district. Under R.C. 3313.85, "[i]f the board of any local school district fails to perform the duties imposed upon it ..., the county board of education in which such district is located, upon being advised and satisfied of such failure, shall act as such board and perform all duties imposed upon such board." In the event a county board of education were to take over the management of a local school district within the county school district pursuant to R.C. 3313.85, the county board of education, while exercising the functions of the local board of education, would be the employer of the substitute teachers of the local school district. See Op. No. 84-003 at 2-6; 1927 Op. Att'y Gen. No. 1288, vol. III, p. 2325 at 2326. Prior opinions of the Attorney General have stated that "[t]here can be a no stronger case of subordination, and, therefore, incompatibility, than a direct employer-employee relationship." 1979 Op. Att'y Gen. No. 79-099 at 2-308; *accord* 1990 Op. Att'y Gen. No. 90-021.

In addition, the superintendent of a county school district is responsible for the assignment of teachers for local school districts. R.C. 3319.01. Under R.C. 3319.01, the county board of education is empowered to appoint, reappoint, and terminate the contract of the county superintendent. The county board of education also evaluates the county superintendent, and fixes the superintendent's compensation. *Id.* In this instance the positions of substitute teacher and member of a county board of education would be incompatible for the reason that a substitute teacher who serves as a member of a county board of education would be placed in a position of appointing, reappointing, evaluating, compensating, and terminating the person who serves as his or her supervisor. See Op. No. 84-003 at 2-6. The substitute teacher would be, as a member of the county board of

education, at least indirectly, a check upon the superintendent who is in charge of the substitute teaching position. Thus, it is clear that the position of member of a board of education of a county school district would be a check upon the position of substitute teacher in a local school district that is located within the county school district.

B. Conflict of Interest

In addition to the aforementioned, there are conflicts of interest between the two positions. An individual may not simultaneously hold two positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public. 1985 Op. Att'y Gen. No. 85-042 at 2-150. A conflict of interest exists when an individual's "responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to influences which may prevent his decisions from being completely objective." 1980 Op. Att'y Gen. No. 80-035 at 2-149.

As noted above, a county board of education is responsible for the alteration of school territorial boundaries and the creation, consolidation, and transfer of school districts and their territory. R.C. 3311.22; R.C. 3311.231; R.C. 3311.26. Under the exercise of authority of a county board of education over the local board of education, an employee of a local board of education such as a substitute teacher, might have, as a member of the county board, undue influence in shaping the territorial boundaries of certain districts to his or her own advantage and the disadvantage of others. See Op. No. 84-003 at 2-6. "Although this incompatibility would not exist except upon the happening of certain contingencies, the positions may still be said to be incompatible before the contingencies arise." *Id.*

Similarly, the employment of an individual as a substitute teacher for a local school district depends on the nomination of the superintendent of the county school district. R.C. 3319.07.² As stated above, a county board of education is empowered to appoint, reappoint, terminate and evaluate the superintendent of a county school district. Because a county board of education exercises such powers with regard to the county superintendent, a county board member would be in a position to exert influence over the superintendent in order to secure his or her nomination as a substitute teacher in a local school district.

A review of the foregoing reveals that the position of member of a board of education of a county school district acts as a check upon the position of substitute teacher in a local school district that is located within the county school district, and that an individual who serves in both positions would be subject to divided loyalties in executing his duties as a county board member. Accordingly, the position of member of a board of education of a county school district with more than one local school district and a substitute teacher in a local school district that is located within the county school district are incompatible.

IV. Effect of the Individual Serving as a Substitute Teacher Prior to Assuming the Office of Member of the Board of Education of a County School District

You have also asked, if the positions are incompatible, whether the fact that the individual was a substitute teacher prior to being elected to the board of

² R.C. 3319.07 does allow as an exception the reemployment of an individual as a substitute teacher who was not recommended by the county superintendent, provided the reemployment is done upon a majority vote of the local school board's full membership and after the local school board has considered two nominations made by the county superintendent.

education of a county school district affects the compatibility analysis. As noted above, the positions in question are incompatible because a member of a board of education of a county school district acts as a check upon the position of substitute teacher in a local school district that is located within the county school district, and an individual who serves in both positions would be subject to divided loyalties in executing his duties as a county board member. The fact that the individual was a substitute teacher prior to being elected or appointed to the board of education of a county school district does not affect the relationship between the two positions or, except with respect to the initial appointment of the individual as a substitute teacher, remove the individual from the conflicts of interest. Consequently, the positions of member of a board of education of a county school district with more than one local school district and substitute teacher in a local school district that is located within the county school district are incompatible, whether or not the individual was employed as a substitute teacher prior to being elected or appointed to the board of education of the county school district.

V. Conclusion

In conclusion, it is my opinion, and you are hereby advised, that the positions of member of a board of education of a county school district with more than one local school district and substitute teacher in a local school district that is located within the county school district are incompatible, whether or not the individual was employed as a substitute teacher prior to being elected or appointed to the board of education of the county school district.