

2055.

OFFICES INCOMPATIBLE—MEMBER COUNTY BOARD OF EDUCATION, TOWNSHIP TRUSTEE AND MAYOR OF INCORPORATED VILLAGE—ACTS OF MEMBER COUNTY BOARD OF EDUCATION VALID IN SUCH CASE.

*SYLLABUS:*

1. *A person may not at the same time hold the offices of member of the county board of education, township trustee and mayor of an incorporated village.*
2. *The acts of a member of a county board of education, performed while such person is also holding the offices of mayor of an incorporated village and member of a board of township trustees, which offices are incompatible, are valid.*

COLUMBUS, OHIO, December 26, 1933.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The following proposition has been submitted to me for a legal opinion and as I have been unable to find any law or former rulings upon the question I am herewith submitting the same to you for your opinion.

A member of the County School Board is also the Mayor of an incorporated village and a member of the Board of Trustees of the Township in which he resides.

May such person legally hold the office of member of the county school board, member of the board of township trustees and Mayor of an incorporated village during the same time?

If he is ineligible to hold the office of a member of the County School Board are the acts already performed by the Board of Education of which this man is a member, voidable?

Your opinion on the above questions is respectfully requested at an early date in view of the fact that the questions propounded will of necessity be important at the time the new board of education takes office.”

Public offices are said to be incompatible when they are made so by statute, or when by reason of the common law rule of incompatibility they are rendered incompatible. The best definition of the common law rule of incompatibility to be found in Ohio is the one stated by the court in the case of *State, ex rel., vs. Gebert*, 12 O. C. C. (N. S.) 274 at page 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.”

In reference to your first question as to the legality of one person holding the three offices mentioned in your letter, I call your attention to an opinion to be found in the Annual Report of the Attorney General for 1913, Vol. II, page 1623, the syllabus of which reads as follows:

"Inasmuch as, under section 7177, General Code, providing for the joint action of township trustees and a municipal corporation in the erection of a boundary line road, and under section 3402, providing for such joint action in the erection of a public building, a mayor and a member of a board of township trustees are obliged to represent conflicting interests, such office may not be held at one and the same time by a single individual.

The acceptance by an officer of an office incompatible with the one occupied by him, operates to vacate the office held."

It is significant to note that the provisions of law upon which that opinion was rendered are the same at the present time. I concur in the holding of that opinion and on the reasoning upon which it was based. It is therefore apparent that the same person may not legally hold at the same time the three offices mentioned in your letter.

Your second question refers to the legality of acts already performed by this person as a member of the county board of education. It might be well to determine if a member of a county board of education may also be (1) a member of the board of township trustees, or (2) mayor of an incorporated village. This office in an opinion to be found in Opinions of the Attorney General for 1931, Vol. I, page 145, has passed upon the first situation. The syllabus of that opinion is as follows:

"An elector in a township may hold the position of township trustee and member of a county board of education at one and the same time."

The above opinion was approved in my opinion No. 1926, rendered November 29, 1933. As to the second situation, I am unable to find provisions of law which would make the offices of member of a county board of education and mayor of an incorporated village incompatible. Likewise, I feel that it would be physically possible for one person to perform the duties of both offices.

Section 4733, General Code, which provides for meetings of county boards of education, reads in part as follows:

"\* \* \* Regular meetings shall be held at least every two months and when necessary other meetings may be held at the call of the president, or any two members. \* \* \*"

Even in the absence of the above discussion relative to the compatibility of those offices, the past acts of this member of the county board of education could certainly be upheld on the basis that he was a de facto officer. However, I feel that in the present situation his acts were the acts of a de jure officer of the county board of education.

Based upon the foregoing, it is my opinion that:

1. A person may not at the same time hold the offices of member of the county board of education, township trustee and mayor of an incorporated village.
2. The acts of a member of a county board of education, performed while such person is also holding the offices of mayor of an incorporated village and member of a board of township trustees, which offices are incompatible, are valid.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*