

cludes any such vehicle when formed by or operated as a combination of a 'semi-trailer' and a vehicle of the dolly type such as that commonly known as a 'trailer-dolly'."

An examination of the foregoing definition clearly reveals that the second vehicle is a trailer, inasmuch as it is without motive power, is designed and used for carrying property wholly on its own structure and is designed and used for being drawn by a motor vehicle.

In view of the above and in specific answer to your inquiries, I am of the opinion that equipment, consisting of a tractor and vehicle constructed from the chassis of a truck which is used for transporting lime from warehouses to farmers and for spreading such lime on the fields of the farmers purchasing the same, is not used principally for agricultural purposes, and consequently, such tractor and vehicle would be subject to the license tax levied upon the operation of a motor vehicle under the provisions of Section 6291, General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.

3088.

INCOMPATIBLE OFFICE — MEMBER, BOARD OF COUNTY COMMISSIONERS — MEMBER, BOARD OF EDUCATION, RURAL SCHOOL DISTRICT, SAME COUNTY—CANNOT LAWFULLY BE HELD SIMULTANEOUSLY BY ONE AND SAME PERSON.

SYLLABUS:

*The offices of member of a board of county commissioners and member of a board of education in a rural school district in the same county are in-*

*compatible and can not lawfully be held simultaneously by one and the same person.*

Columbus, Ohio, December 6, 1940.

Hon. J. Ewing Smith, Prosecuting Attorney,  
Bellefontaine, Ohio.

Dear Sir:

I am in receipt of your request for my opinion concerning the question of the possibility under the law of a person holding simultaneously the office of member of a rural board of education and that of county commissioner in the same county.

The law does not interdict the holding of two public offices at the same time by one and the same person unless there are constitutional or statutory inhibitions upon the same or one of the offices is subordinate to or a check upon the other or the duties and functions of the different positions are inconsistent so that it would be inimical to the public interest and improper from considerations of public policy for the occupant of the offices to attempt to perform the conflicting and inconsistent duties which would be incumbent upon him as the occupant of the different positions. Under such circumstances, the offices are said to be incompatible.

Even where an express constitutional or statutory prohibition does not exist against the holding of two public offices by the same person at one time, it has long been the settled rule of the common law that where public offices are in fact incompatible because of conflicting duties, the offices may not lawfully be held simultaneously by one person. This rule of the common law is evidenced by many authorities and its correctness and propriety so well established as to be assumed without discussion in practically every case in which the matter of common law incompatibility arises. See Annotation L. R. A., 1917 A 216, O. Jur., Vol. 32, 906 et seq., 100 A. L. R. Annotation, 1162; State ex rel. Louthion v. Taylor, 12 O. S., 130; Mason v. State, 58 O. S., 30, 54; State ex rel. Wolf v. Slioffer, 6 O. N. P., (N. S.), 219.

Considerable difficulty arises in some border line cases in determining whether or not incompatibility exists. Many courts have discussed the question generally and have almost without exception agreed upon general underlying principles but have not even attempted to formulate an all inclusive

formula that will serve in all cases to determine whether or not offices are incompatible. Text writers and commentators have laid down or pronounced no definite rule on the subject.

While, to my knowledge, there are no court decisions in this state wherein the matter is discussed, nor has the question been the subject of any court decisions, this office has taken the position and consistently held for a number of years that when the duties of a public office are such that the incumbent thereof is charged by law with the presentation of a tentative budget for the subdivision he represents upon which tax levies are to be based, and he is required to represent his taxing district when adjustments are made in the budgets of the several taxing districts of a county by the county budget commission any attempt on his part to represent two such taxing districts would result in his representing adverse interests and the two offices would therefore be incompatible and could not lawfully be held by the same person at one time.

This rule has been consistently adhered to by all Attorneys General since at least 1915 and is illustrated by a number of opinions. See Opinions of the Attorney General for 1915, page 2357; 1917, page 256; 1927, pages 5 and 2375 and 1928, page 2777.

The correctness and propriety of the rule followed in the above cited opinions have not been questioned at least to the extent of its being challenged in court.

A rural board of education is by the terms of the so-called Budget Law, the "taxing authority" for the rural school district it represents. A board of county commissioners is the taxing authority for the county within which it functions. It is the duty of each of these taxing authorities at a time fixed by law, to adopt and submit to the county auditor of their county a tax budget for the succeeding fiscal year. The county auditor lays this before the county budget commission whose duty it is to so adjust the estimated amounts required from the general property tax for each fund as shown by the several budgets for subdivisions within the county submitted to it, as to bring the tax levies required therefor within the limitations fixed by law. In making such adjustment it frequently happens that members of the several taxing subdivisions of the county appear before the budget commission to represent the interests of their constituents and oftentimes to urge the making of adjustments for their benefit in such a manner as to be detrimental to the interests of other interested subdivisions in the same county. In such a case

the members of the several taxing authorities frequently find themselves in the position of adversaries. The possibility of such a situation arising and existing renders the office of member of one taxing authority in a county incompatible with that of membership on another taxing authority in the same county. Under this rule the office of county commissioner is clearly inconsistent with the office of member of a rural board of education in the same county.

It was so held in an opinion of the then Attorney General in 1928. See Opinions of the Attorney General for 1928, page 2777, and again in 1932, see Opinions of the Attorney General for 1932, page 1528.

There has been no change in the status of county commissioners or members of a rural board of education in so far as their relation to the county budget commission or the county budget law is concerned, since the rendition of the opinions above referred to.

I am therefore of the opinion in specific answer to your question that it is not possible under the law for one and the same person to hold the offices of county commissioner and member of a rural board of education in the same county at one time.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.

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3098.

POLICE DEPARTMENT, CITY—GOVERNING BODY OF CITY MAY BY ORDINANCE OR RESOLUTION PROVIDE LOCAL COURSE OF TRAINING FOR POLICE—SALARY AND EXPENSES OF POLICE OFFICER MAY BE PAID AT FEDERAL BUREAU OF INVESTIGATION SCHOOL TO ENABLE SUCH OFFICER TO CONDUCT LOCAL COURSE OF TRAINING.

SYLLABUS:

*The governing body of a city may, by ordinance or resolution, provide for a local course of training for the police department of the city and pursuant to such purpose the salary and expenses of a police officer may be paid*