

1742

COMPATIBILITY—MEMBER, BOARD OF COUNTY HOSPITAL TRUSTEES AND EMPLOYEE OF COUNTY HOSPITAL, INCOMPATIBLE—§339.06 R.C.

SYLLABUS:

The provisions of Section 339.06, Revised Code, make the office of member of the board of county hospital trustees incompatible with the position of employee in the county hospital.

Columbus, Ohio, February 20, 1958

Hon. Harold D. Spears, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“There is situated in this County a County General Hospital for which trustees have been duly appointed from time to time in accordance with law. There has now been presented the question of whether one of the members of this Board of County Hospital Trustees may serve as billing clerk in the office of the General Hospital, thus serving in the capacity of an employee of the General Hospital.”

It is stated in 32 Ohio Jurisprudence, 908, as follows:

“It was early held that the test of incompatibility was not that it was physically impossible for the officer to perform the duties of one office because he was at that time elsewhere performing the duties of the other, but the distinction was in an inconsistency in the functions of the office. One of the most important

tests as to whether offices are incompatible is found in the principle that incompatibility is recognized *whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other,—as an officer who presents his personal account for audit and at the same time is the officer who passes upon it,—or is in any way a check upon the other, or where a contrariety and antagonism would result in an attempt by one person to discharge the duties of both.*” (Emphasis added)

An excellent definition of incompatibility is found in the case of *The State of Ohio, ex rel. Attorney General v. Frank Gebert*, 12 C. C. (N.S.), 274, which reads 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 to discharge the duties of both.”

Section 339.06, Revised Code, describes the powers of the board of county hospital trustees in part as follows:

“The board of county hospital trustees shall employ an administrator, and, upon the nomination by such administrator, shall confirm the employment of such physicians, nurses, and other employees as are necessary for the proper care, control, and management of such hospital and its patients, and the board of county hospital trustees shall fix their respective salaries and compensation. Any person, including the administrator, may be removed by the board of county hospital trustees at any time when the welfare of such institution warrants removal. The administrator and such other employees as the board of county hospital trustees deems necessary shall be bonded in amounts established by the board of county hospital trustees, the expense of which shall be paid out of hospital operating funds.” (Emphasis added)

The control the board may exercise over employees of the hospital makes it readily apparent that there is subordination of one to the other. There can be no doubt that the power to remove is a complete check of one upon the other. It seems quite certain that a person may not act both as employer and employee and retain compatibility.

This being true, it is my opinion that the provisions of Section 339.06, Revised Code, make the office of member of the board of county hospital trustees incompatible with the position of employee in the county hospital.

Respectfully,
WILLIAM SAXBE
Attorney General