

OPINION NO. 759

Syllabus:

The offices of village clerk and member of the Board of Health of a county encompassing such village are compatible, except where it is physically impossible for one person to perform the duties of both offices simultaneously.

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To: George E. Schroeder, Putnam County Pros. Atty., Ottawa, Ohio
By: William B. Saxbe, Attorney General, January 2, 1964

I have before me your request for my opinion which reads as follows:

"I hereby request your opinion on the compatibility or incompatibility on the office of village clerk and member of the Board of Health for the County."

Public offices are incompatible when either the statutes or the constitution expressly so provides or when they are rendered incompatible by the common law test of incompatibility. That test is expressed in State, ex rel. Attorney General v. Gebert, 12 C.C. (NS) 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."

I have found no express prohibition against one person holding the office of village clerk and being a member of the Board of Health of a county encompassing that village. Therefore, a determination of your question depends upon whether the general duties of the two positions in question are incompatible per the common law test of incompatibility set forth in State ex rel. Attorney General v. Gebert, supra.

The duties of a village clerk are set forth in Section 733.27, Revised Code, as follows:

"The village clerk shall attend all meetings of the legislative authority of the village, and keep a record of its proceedings and of all rules, by-laws, resolutions, and ordinances passed or adopted, which shall be subject to the inspection of all persons interested."

A County Board of Health is created under the legislative authority of Sections 3709.01, 3709.07 and 3709.10, Revised Code, which authorizes a general health district to be formed.

The duties of the board of a general health district are expressed in Section 3709.22, Revised Code, as follows:

"Each board of health of a city or general health district shall study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The board may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and county homes, and other charitable, benevolent, and correctional institutions. The board may also provide for the inspection of dairies, stores, restaurants, hotels, and other places where food is manufactured, handled, stored, sold, or offered for sale, and for the medical inspection of persons employed therein. The board may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease.

"In the medical supervision of school children, as provided in this section, no medical or surgical treatments shall be administered to any minor school child except upon the written request of a parent or guardian of such child. Any information regarding any diseased condition or

defect found as a result of any school medical examination shall be communicated only to the parent or guardian of such child and if in writing shall be in a sealed envelope addressed to such parent or guardian."

Upon reading the statutes quoted above, I must conclude that the duties of the offices of village clerk and member of the Board of Health of a county do not conflict, either in their nature or their scope.

Neither office is a check upon, nor in any way subordinate to the other. The determination of compatibility must rest upon the fact of whether it is physically possible for the same person to perform the duties of both offices simultaneously. The resolution of this question may be made by your office based upon the facts of the particular situation.

Therefore, it is my opinion and you are advised that the offices of village clerk and member of the Board of Health of a county encompassing such village are compatible, except where it is physically impossible for one person to perform the duties of both offices simultaneously.