

3563.

APPROVAL, BONDS OF CITY OF GARFIELD HEIGHTS, CUYAHOGA COUNTY, OHIO—\$141,385.00.

COLUMBUS, OHIO, December 4, 1934.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3564.

APPROVAL, BONDS OF CITY OF CUYAHOGA FALLS, SUMMIT COUNTY, OHIO—\$1,000.00.

COLUMBUS, OHIO, December 4, 1934.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3565.

APPROVAL, BONDS OF MAHONING COUNTY, OHIO—\$12,000.00.

COLUMBUS, OHIO, December 4, 1934.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3566.

BOARD OF EDUCATION—MAY APPOINT ONE PERSON TO TWO POSITIONS OF ASSISTANT COUNTY SUPERINTENDENT OF SCHOOLS AND COUNTY ATTENDANCE OFFICER WHEN—(O. A. G. 1921 P. 793; 1928, P. 956 MODIFIED).

*SYLLABUS:*

*A county board of education may in its discretion appoint an assistant county superintendent of schools or a county attendance officer for part time service, and may under such circumstances, lawfully appoint one person to the two positions. (Opinions of the Attorney General for 1921, at page 793, and for 1928, at page 956, modified.)*

COLUMBUS, OHIO, December 4, 1934.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as to whether or not a county board of education may lawfully appoint one person to the two positions of Assistant County Superintendent of Schools and County Attendance Officer.

Authority to elect one or more assistant county superintendents of schools, as the county board of education may determine, appears in Section 4739, General Code. The duties of such assistant superintendents, if any are appointed, are fixed by Section 7706, General Code, which reads as follows:

“The county superintendent and each assistant county superintendent shall visit the schools in the county school district, direct and assist teachers in the performance of their duties, and classify and control the promotion of pupils. The county superintendent shall spend not less than one-half of his working time, and the assistant county superintendents shall spend such portion of their time as the county superintendent may designate in actual class room supervision. Such time as is not spent in actual supervision shall be used for organization and administrative purposes, and in the instruction of teachers. At the request of the county board of education the county superintendent and the assistant county superintendents shall teach in teachers’ training courses which may be organized in the county school district.”

Provision is made by Section 7769-1, General Code, for the employment of a county attendance officer and assistants. This section reads in part:

“Every county board of education shall employ a county attendance officer, and may employ or appoint such assistants as the board may deem advisable. \* \* \*”

The duties of a county attendance officer are set out in Sections 7769-2, 7770, 7771, 7773-1, 7777 and 7780, General Code.

In general, the duties of a county attendance officer consist of investigating non-attendance of pupils at school, the employment of minors, the enforcement of the law relating to compulsory education and the performance of such other service as the superintendent of schools or the board of education may deem necessary to preserve the morals and secure the good conduct of school children, and to enforce the laws relating to compulsory education and the employment of minors. An attendance officer and his assistants are vested with police powers and the authority to serve warrants and to enter workshops, factories, stores and all other places where children are employed, and to do whatever may be necessary in the way of investigation and otherwise enforcing the laws relating to compulsory education and the employment of minors.

It will be noted from the provisions of Section 7706, supra, where the duties of assistant county superintendents of schools are enumerated, that it is stated that such time of assistant county superintendents as shall be determined by the county superintendent shall be employed in actual classroom supervision and the remainder shall be used for organization and *administrative purposes* and the instruction of teachers.

In recent years especially, the trend has been to regard non-attendance of pupils, the employment of minors, the enforcement of compulsory education laws, the correlation of school census with pupil attendance and similar matters to be distinctly one of the problems or branches of school administration, and one of the administrative purposes of school management. Such reputable authorities as Prof. Cubberly, of Leland Stanford University, Prof. Reeder and Dr. Heck, of the Ohio State University, and other textwriters and educators

clearly recognize that the enforcement of compulsory education laws and their attendant problems are a part of school administration. College courses of study purporting to cover school administration include work in problems of pupil accounting and attendance, and all textbooks on the subject of school administration and management contain chapters on school attendance, child accounting and compulsory education involving incidentally the employment of minors in industry, in the trades and on farms. In Prof. Reeder's work on "The Fundamentals of Public School Administration" on page 3, under the heading "Typical Administrative Problems," it is stated:

"A more detailed list of things which school administration does, or should do, is the following: makes the school budget and secures the revenue for financing the schools; sees that all school money is economically expended and accounted for; \* \* \* takes, organizes, and makes proper use of school census; sees that the pupils attend school; \* \* \*"

E. P. Cubberly, in his work on "Public School Administration," has included a chapter therein on "The Attendance Department." Dr. Heck has devoted almost an entire volume on the "Administration of Pupil Personnel," to pupil attendance and related problems. It is pointed out that schools fail of their purpose to the degree to which children fail to attend, not only because those who are inclined to be delinquent in attendance are oftentimes the ones most in need of instruction but because any large percentage of non-attendance tends to disorganize the entire school program. Moreover, non-attendance of pupils seriously affects the funds allotted to schools where that allocation is based on average daily attendance, as is the case with much of the public revenue allotted to public education.

It appears to be well recognized in responsible school circles that the enforcement of compulsory attendance laws and its attendant problems is a distinct part of school administration. There is no reason therefore, under the statutes why an assistant county superintendent may not lawfully devote that part of his time which is to be devoted to "organization and administrative purposes" to the enforcement of compulsory education laws and whatever is necessary to effect that purpose if he should be delegated to do so by the county superintendent or the county board of education. In fact his duty in this respect is fully as well directed by the statute, Section 7706, General Code, as is that of an attendance officer by the statutes which fix his duties.

In the early days of enforcement of compulsory school laws the attendance officer or truant officer was a mere policeman, sometimes called a "hookey cop". Strong arm methods were used. Children were dragged to school at times by main force. Little attention was given to the causes of delinquency in attendance and the investigation and remedying of the conditions which caused non-attendance. It later became evident that such methods were not conducive to the best interests of the schools and that a different type of attendance officer was needed. At present, school authorities everywhere recognize the need of having attendance officers with some of the qualifications at least of social service workers rather than those who make use of strong arm methods only in the performance of their work. In some states the law requires attendance officers to be certified as teachers or to pass some other equally satisfactory qualification test. In a comparatively recent report from the city of Denver, where the school standards

are recognized to be among the highest, it is said with respect to attendance officers:

"These officers are chosen with great care. It is the plan that in the future all field officers must have the same educational qualifications as are required of teachers. In other words, the plan is to select as field officers men and women who are specially prepared for educational and social work."

The law of Ohio does not fix any qualifications whatever for eligibility to appointment to the position of attendance officer. Educators and school authorities are insisting more and more, however, that such officers do possess such qualifications as will enable them to perform their duties in a manner consistent with a more progressive conception of how those duties should be performed. In some of the smaller cities or communities, the superintendent of schools and his assistants or teachers perform many of the duties of attendance officers. In others the position of "visiting teacher" is erected, whose duties consist largely of those dealing with attendance problems and delinquency in general.

Incompatibility in public offices or employments may exist by reason of express constitutional or statutory inhibition, or by what is known as common law incompatibility, or where it is physically impossible for one person to perform the duties of two or more positions.

Common law incompatibility in public offices or employments exists where there is a conflict of duties of the occupants of different positions. This rule is stated in *Corpus Juris*, Vol. 46, page 941, as follows:

"At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But where the functions of two offices are inconsistent, they are regarded as incompatible. The inconsistency, which at common law makes offices incompatible, does not consist in the physical impossibility to discharge the duties of both offices, but lies rather in a conflict of interest, as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power to remove the incumbent of the other or to audit the accounts of the other."

See *State vs. Taylor*, 12 O. S., 130; *State ex rel. vs. Gebert*, 12 O. C. C. (N. S.), 274; *State ex rel. vs. Gibbons*, 40 A. L. R. 286.

There are no constitutional or statutory inhibitions upon the holding of the two positions of assistant county superintendent of schools and county attendance officer contemporaneously, by one and the same person, and it is apparent that so far as the common law rule of incompatibility is concerned, there is no reason for saying that one and the same person may not hold both positions at the same time, not only because the express statutory duties which are fixed for the two positions are practically the same in many respects but for the further reason that the commonly accepted administrative practice is to have the duties of both positions filled by superintendents or teachers. A former Attorney General in an opinion found in the reported Opinions of the Attorney General for 1927, at page 1168, said:

"A board of education of a city school district may in its discretion appoint its superintendent of schools as attendance officer if circumstances are such that it is physically possible for one person to perform the duties of both positions."

It is a fact that in many of the smaller cities and exempted village school districts the superintendent or one of his assistants performs the work of an attendance officer. In these districts, however, the details of the work of a superintendent and his staff are largely left to the control of the board of education, and are not fixed by statute as are those of an assistant county superintendent by the terms of Section 7706, *supra*. It is because of the terms of this latter statute which fixes the duties of an assistant county superintendent of schools and in so doing allocates those duties in such a way as to occupy his entire time, that led two former Attorneys General, in opinions found in the reported Opinion of the Attorney General for 1921 at page 793, and for 1928 at page 956, to hold that one person could not lawfully be appointed to the position of assistant county superintendent of schools and county attendance officer. The reason given is that the law provided in Section 7706, General Code, that all the time of an assistant county superintendent of schools was taken up in the performance of the duties fixed therein and that it was therefore physically impossible for him to perform the duties of attendance officer.

No consideration was given in either of these opinions to the question of whether or not appointments might be made to these positions for part time service. The county board of education appoints the incumbents of each position and fixes the compensation therefor, and I see no reason why a county board of education may not appoint an assistant county superintendent or an attendance officer for part time service if it desires to do so in the absence of any express statutory provision that either of the incumbents of these positions shall devote their entire time to the duties of their respective positions. If that is done any incompatibility that might exist by reason of its being physically impossible to perform the duties of both positions is removed. For that reason I believe the former opinions should be modified.

I am therefore of the opinion, in specific answer to your question that a county board of education may in its discretion appoint an assistant county superintendent of schools or a county attendance officer for part time service, and may under such circumstances lawfully appoint one person to the two positions.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3567.

APPROVAL, BONDS OF VILLAGE OF AMHERST, LORAIN COUNTY,  
OHIO—\$49,500.00.

COLUMBUS, OHIO, December 4, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*