

1995.

OFFICES INCOMPATIBLE—COUNTY TREASURER AND TOWNSHIP  
CLERK—COUNTY TREASURER AND CLERK-TREASURER OF  
BOARD OF EDUCATION IN COUNTY.

1. *The offices of county treasurer and township clerk are incompatible and cannot be held by the same person at the same time.*

2. *That the offices of county treasurer and clerk-treasurer of a board of education in the county are incompatible and cannot be held by one and the same person at the same time.*

COLUMBUS, OHIO, April 13, 1921.

HON. KARL TIMMERMEISTER, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department as to the compatibility of the following offices, to-wit:

1. County treasurer and township clerk;
2. County treasurer and clerk-treasurer of the township (rural) board of education.

Bearing upon the question as to what offices the county treasurer is prohibited from holding under the statutes, your attention is invited to section 11 of the General Code, reading as follows:

“No person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, probate judge, and justice of the peace.”

It will be noticed that in this section there is no reference to the office of township clerk or of clerk-treasurer of a rural board of education. The question then is as to whether the duties of one of these offices conflict in any manner with the duties of the other office.

A concise and accurate statement of the rule of incompatibility of offices will be found in section 34 of Throop on Public Offices, as follows:

“The force of the word (incompatibility) in its application to this matter, is that, from the nature and relations to each other of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one toward the incumbent of the other.”

“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.” (State ex rel vs. Gebert, 12 C. C. (n. s.) 274.)

In the case of State vs. Bus, 135 Mo., 325, in the opinion of the court, on page 338, the following rule of incompatibility is laid down:

“At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incom-

patibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two; some conflict in the duties required of the officers, *as where one has some supervision of the other, is required to deal with, control or assist him.*"

Attention is also called to the case of *Wells vs. Estate*, 94 N. E., 321, Indiana Supreme Court, wherein Meyers, C. J., held that the duties of the officer disbursing certain of the school funds and the trustee of the school receiving such funds, would be incompatible in that

"there is such a connection between the two offices with respect to the school funds that leads to such an incompatibility with respect to their management in the supervision of the one over the other, that the acceptance of one is the vacation of the other."

"The offices of city treasurer and county treasurer are a check upon each other so far as city and school funds are concerned. It is not the policy of the law that such offices should be held by the same person at the same time." (Opinion of the Attorney-General, Vol. 1, 1911-12, page 335.)

"The treasurer of a county may not act as a member of the board of education of the village school district located in such county." (Opinion of the Attorney-General, Vol. 3, 1915, p. 2462.)

In arriving at the above conclusion (Vol. 3, 1915, p. 2462) the then Attorney-General said:

"Section 5649-3b of the General Code, as amended in 106 O. L., 180, provides in part as follows:

"There is hereby created in each county a board for the annual adjustment of the rates of taxation and fixing the amount of taxes to be levied therein, to be known as the budget commissioners. The county auditor, the county treasurer and the prosecuting attorney shall constitute such board."

"Section 5649-3c of the General Code, makes it the duty of the county auditor to lay before the budget commissioners the annual budgets submitted to him by the boards and officers named in section 5649-3a G. C., together with an estimate to be prepared by the auditor of the amount of money to be raised for state purposes in each taxing district in the county, and such other information as the budget commissioners may request, or the tax commission of Ohio may prescribe. Said section further provides that:

"The budget commissioners shall examine such budgets and estimates prepared by the county auditor, and ascertain the total amount proposed to be raised in each taxing district, for state, county, township, city, village, school district, or other taxing district purposes. If the budget commissioners find that the total amount of taxes to be raised therein does not exceed the amount authorized to be raised in any township, city, village, school district, or other taxing district in the county, the fact shall be certified to the county auditor. If such total is found to exceed such authorized amount in any township, city, village, school district, or other taxing district in the county, the budget commissioners shall adjust the various amounts to be raised so that the total amount thereof shall not exceed in any taxing district the sum authorized to be levied therein. In making such adjustment the budget commissioners may revise and change the annual estimates contained in such budgets, and may reduce any or all the items

in any such budget, but shall not increase the total of any such budget, or any item therein. The budget commissioners shall reduce the estimates contained in any or all such budgets by such amount or amounts as will bring the total for each township, city, village, school district, or other taxing district, within the limits provided by law, \* \* \*

You will readily observe that the duties of the county treasurer as a member of the board of budget commissioners of the county would conflict with the duties of a member of the board of education of a school district in such county, for the reason that the budget commissioners, in considering the annual budget of the various taxing authorities of the county and in limiting the amount of taxes to be raised in each of the several taxing districts of such county to the amount authorized by law to be raised in such taxing district, acts as a check on said taxing authorities.

It follows, therefore, that inasmuch as the board of education of a school district is one of the taxing authorities of the county in which such district is located, the office of county treasurer is incompatible with the office of member of the board of education of such school district, under the rule laid down by the court in the case of *State ex rel vs. Gebert*, 12 O. C. C. (n. s.) 294.

I am therefore of the opinion, in answer to your question, that the treasurer of a county may not act as a member of the board of education of a village school district located in such county."

In considering your first question as to whether the county treasurer could at the same time be a township clerk in his county, it is necessary to consider the duties of these two officers and the extent to which they deal each with the other. There seemingly exists no incompatibility between the office of township clerk and the office of county treasurer as regards their nominal duties. The incompatibility, however, obtains because the county treasurer is one of the members of the county budget commission and therefore passes upon the various budgets submitted by the officers in the taxing districts throughout his county. It is true that the township clerk is not a member of the board of trustees in his township and has no direct authority or any vote on the making of any levy which might go before the county budget commission for its approval or disapproval. But the township clerk is the clerk of the board of township trustees and is the agent and ministerial officer of such board. He makes up the annual statements of the disbursements of the township and prepares the resolutions covering tax levies by the board of township trustees. If the township clerk, as the agent and employe of the board of township trustees, is directed by such board to appear before the county budget commission and explain his own figures and fiscal transactions in the township, and make a plea for the retention of a levy made by the township board of which he is an agent, and at the same time was also a member of the budget commission, as for instance county treasurer, it is apparent that he would be presenting his case before a tribunal of which he himself was one of the members and might have the deciding vote in a budget commission composed of three members. Under these circumstances he could, as a budget commissioner, favor the township presenting the budget, which he himself had prepared as the agent of the trustees of such township in his capacity as township clerk.

Bearing upon your second question as to the question of compatibility between the offices of county treasurer and clerk-treasurer of a rural (township) board of education, the same rule would obtain as given above, because in this case the clerk-treasurer of the board of education is the ministerial officer and employe of the

board of education and it has authority to direct him to appear before the budget commission of the county and make an appeal for the approval of a certain tax levy proposed by the board of education. The clerk-treasurer of the board of education prepares the resolutions, keeps the books, and transactions of the board of education, and frequently is the agent of the board of education. Inasmuch as a member of the board of education cannot at the same time be county treasurer, it would follow that one who is the agent of the board of education in its financial transactions, would be in the same position as the member and the duties of the clerk (who is also treasurer) of the board of education are therefore incompatible with the duties of county treasurer. But even though no incompatibility existed between the offices of county treasurer and clerk of the board of education in the township, it must be remembered that the clerk of the board of education, under the statutes, is also the treasurer of the local school district, and attention is therefore invited to those sections which bear upon the dealings of the township treasurer with the county treasurer in the handling of the school funds. Thus section 2640 provides:

"The county treasurer shall keep an accurate account of all moneys by him received, showing the amount, the time, from whom and from what source received, and of all disbursements by him made, showing the amount thereof, the time, *to whom and for what purpose paid.* \* \* \*"

Section 2689 G. C. also provides:

"Immediately after each semi-annual settlement with the county auditor, on demand, and presentation of the warrant of the county auditor therefor, the county treasurer shall pay to the township treasurer, city treasurer, or other proper officer thereof, all moneys in the county treasury belonging to such township, city, village or school district."

It is apparent therefore that under the provisions of section 2689 the county treasurer would have financial dealings with the treasurer of a school district in his county in their joint handling of trust funds. The section virtually says that the county treasurer shall pay such trust funds to the school board treasurer, and therefore if both of these places are held by the same person, the county treasurer is paying such funds to himself and in the course of business naturally taking his own receipt for the same. It is thus clear that the duties of county treasurer and the duties of clerk-treasurer are incompatible, because one office is a check upon the other, as it is the duty of the treasurer of the board of education to check up and see, on behalf of his employing board, whose agent he is, that his district receives all of the school funds to which it is entitled.

In answer to your two questions, it must therefore be held, in the light of the opinions and decisions above quoted, and the sections cited:

1. That the offices of county treasurer and township clerk are incompatible and cannot be held by the same person at the same time.
2. That the offices of county treasurer and clerk-treasurer of a board of education in the county are incompatible and cannot be held by one and the same person at the same time.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*