

vision of Conservation in your department has submitted to me for my examination and approval a reservoir land lease in triplicate, executed by the Conservation Commissioner, under the authority of Section 471, General Code, to one Thelma L. Garrison of Lancaster, Ohio. By the lease here in question, which is one for a stated term of fifteen years and which provides for an annual rental of \$18.00, there is leased and demised to the lessee above named, the right to occupy and use for cottage site and docklanding purposes a certain parcel of reservoir lands at Buckeye Lake, the same being in the Southeast Quarter of Section 28, Town 17, Range 18, Fairfield County, Ohio, and being that portion of the center part of Lot No. 7, north of the Summerland Beach Road, which is more particularly described as follows:

“Commencing at an iron pin in the northerly line of the Summerland Beach Road that is 21 feet west of an iron pin that marks the southeast corner of Lot No. 7, and also marks the southwest corner of the lease owned by the Millersport Bank Company, and running thence westerly along the northerly line of said road, 37 feet to an iron pin; thence northerly, 61 feet to a mark in the concrete retaining wall; thence westerly along said retaining wall, 34.6 feet to a mark on the stone retaining wall that is 16 feet west of the northeast corner of said Lot No. 7; thence southerly, 52 feet to the place of beginning.”

Upon examination of this lease I find that the same has been properly executed by the Conservation Commissioner and by Thelma L. Garrison, the lessee therein named. I further find upon examination of the provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with the section of the General Code above referred to, and with other statutory enactments relating to leases of this kind. I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3616.

PUBLIC UTILITIES COMMISSION—INVESTIGATOR OF COMMISSION
MAY SIMULTANEOUSLY SERVE ON COUNTY BOARD OF ELEC-
TIONS AND CHAIRMAN OF COUNTY EXECUTIVE COMMITTEE
WHEN.

SYLLABUS:

An Investigator in the Public Utilities Commission, who is not in the Classified Civil Service, may at the same time be a member of a County Board of Elections and Chairman of a County Executive Committee, if it is physically possible to perform the duties of all three positions.

COLUMBUS, OHIO, December 12, 1934.

HON. CLIFTON L. CARYL, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“This office desires an opinion on the following question as follows:

As to whether or not one who holds an appointment with the State Tax Commission of Ohio and at the same time holds a position as supervisor of the Board of Elections and is also Chairman of the Democratic Executive Committee of Union County, and as to whether the various holdings mentioned above would or would not be incompatible?”

I am informed that the person in question is not in the employment of the Tax Commission, but rather is employed in the Investigation Department of the Public Utilities Commission in the Unclassified Civil Service. You also refer to supervisor of the Board of Elections. I am informed that such reference is to a member of the County Board of Elections.

Public offices are said to be incompatible when they are made so by statute, or when by reason of the common law rule of incompatibility they are rendered incompatible. The best definition of the common law rule of incompatibility to be found in Ohio is the one stated by the court in the case of *State, ex rel., vs. Gebert*, 12 O. S. C. (N. S.) 274 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.”

The same test is applicable to public employment that is applicable to public offices. The question of whether or not as Chairman of the Democratic Executive Committee he would be holding a public office is answered in the negative. See the case of *Board of Elections vs. Henry*, 25 O. App. 278.

Since the position with the Public Utilities Commission is not in the Classified Civil Service, his holding the position of Chairman of the Executive Committee could not be said to be a violation of Section 486-23, General Code, which prohibits a person in the Classified Civil Service from taking part in politics other than to vote as he pleases and to express freely his political opinions. It might be urged that as member of the Board of Elections he should not hold the position of Chairman of a County Executive Committee. However, the Legislature, by the enactment of Section 4785-16, General Code, has apparently sanctioned the holding of these two positions by one and the same person. This section reads as follows:

“No person shall serve as a member, clerk, deputy clerk, assistant clerk, or employe of the board of elections who is a candidate for an office to be filled at an election, except the office of delegate or alternate to a convention or a member of a party committee.”

Likewise, I am unable to find any conflict in the duties of such person as an employe in the Public Utilities Commission with those duties as member of the Board of Elections and Chairman of a County Executive Committee.

After an examination of the statutes and the duties of these positions, it would appear that there is nothing to prevent one and the same person from holding the three positions in question at the same time if it is physically possible to perform the duties of the three positions. This office has, in numerous opinions, held that the question of physical possibility to discharge the duties of various positions is a question of fact rather than of law. A few of the recent opinions of this office to this effect are as follows: Opinions of the Attorney General for 1933, Vol. 1, page 360; Vol I, page 763; Vol. II, page 1213; Opinion No. 2289, rendered February 16, 1934. I call your attention to my opinion No. 2471, rendered April 7, 1934, the syllabus of which reads:

"A member of a county board of elections may at the same time hold the position of clerk of a city council and that of employe in the County Auditor's office, as distinguished from a deputy in the County Auditor's office, if, as an employe in the County Auditor's office, he is not in the classified civil service and if it is physically possible to perform the duties of all three positions."

In view of the above and in specific answer to your inquiry, it is my opinion that an Investigator in the Public Utilities Commission, who is not in the Classified Civil Service, may at the same time be a member of a County Board of Elections and Chairman of a County Executive Committee, if it is physically possible to perform the duties of all three positions.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3617.

SCHOOL DISTRICT—ANNEXATION OR CONSOLIDATION OF DISTRICTS TERMINATES POWER TO LEVY, ASSESS AND COLLECT TAXES.

COLUMBUS, OHIO, December 12, 1934.

SYLLABUS:

1. *Where the entire territory of a school district is annexed to another school district in the manner provided by law, or where the whole territory of a school district is absorbed in the creation of a new school district as provided by law, the district so annexed or absorbed is thus dissolved and destroyed and the board of education of such district is abolished, unless otherwise provided by law.*

2. *Where school districts are consolidated or the entire territory of one district is annexed to another district, the districts so consolidated or annexed cease to exist and the power of such districts to levy, assess and collect taxes is thereupon terminated unless otherwise provided by statute.*

3. *The dissolution or abolition of a school district is effective immediately upon the completion of statutory proceedings therefor.*

4. *Where the taxing authorities of two school districts had, prior to September 15, 1934, passed the necessary resolutions for the submission to the electors*