

447

RECORDER, COUNTY—COMPATIBILITY WITH SUPERVISOR
OF SOIL CONSERVATION DISTRICT—§1515.05.

SYLLABUS :

The office of county recorder is incompatible with that of a supervisor of a soil conservation district elected as provided in Section 1515.05, Revised Code.

Columbus, Ohio, May 12, 1959

Hon. Fred F. Fox, Prosecuting Attorney
Noble County, Caldwell, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Will you please advise me whether the office of county recorder is compatible with that of a Board Member of the Board of Supervision of a Local Soil Conservation District?”

A county recorder is an elective county officer by virtue of Section 317.01, Revised Code, while a member of the Board of Supervision of a Local Soil Conservation District (defined as a “Supervisor” in Section 1515.01, Revised Code) is an elective officer of a Soil Conservation District under the provisions of Section 1515.05, Revised Code.

A search of the Ohio constitution and statutes fails to disclose any provision that prevents a person from holding these two offices at the same time.

Therefore, since there is no provision in the Constitution or statutes making these offices incompatible, it remains only to determine whether said offices are incompatible under the test of the common law.

The common law rule is concisely set forth in 32 Ohio Jurisprudence, 908, 909, Section 48, as follows :

“* * * 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)

Considering now the duties and functions of the two offices here in question, I invite your attention to Section 5705.28, Revised Code, which reads in part as follows :

“On or before the fifteenth day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. *To assist in its preparation*, the head of each department, board, commission, and *District authority entitled to participate in any appropriation or revenue of a subdivision* shall file with the taxing authority, * * * an estimate of contemplated revenue and expenditures for the ensuing fiscal year, * * *.” (Emphasis added)

A taxing authority or taxing unit as defined in Section 5705.01, Revised Code, does not include a soil conservation district. A soil conservation district may not, therefore, adopt its own tax budget. It must, however, assist in the preparation of the county's budget because it is a district authority which may be entitled to participate in an appropriation of the county. Section 1515.10, Revised Code.

In connection with the preparation of the above mentioned budget, Section 5705.30, Revised Code, requires that the board of county commissioners shall hold at least one public hearing thereon. It is conceiv-

able that at such a hearing, the heads of departments and districts may be called upon to defend their estimates of contemplated expenditures or face a cut in their share of the appropriation. A cut in the share of the appropriation allocated to one department or district might well mean that more funds would be available for distribution to other departments and districts. Where the same person participates in the preparation and defense of estimates for two such departments or districts, his impartiality in the matter may be questionable. This, in my opinion, reveals such a "contrariety and antagonism" as will make the offices in question incompatible.

Accordingly, in specific answer to your query, it is my opinion that the office of county recorder is incompatible with that of a supervisor of a soil conservation district elected as provided in Section 1515.05, Revised Code.

Respectfully,

MARK McELROY

Attorney General