

OPINION 65-60

Syllabus:

The position of a member of city council can be held simultaneously with that of principal and teacher of a local elementary school.

To: George Schilling, Clinton County Pros. Atty., Wilmington, Ohio
By: William B. Saxbe, Attorney General, April 12, 1965

I have before me your request in which you ask whether the position, member of city council, can be held simultaneously with that of principal and teacher of a local elementary school.

One of my predecessors in office previously held in Opinion No. 552, Opinions of the Attorney General for 1929, Page 845, that a teacher in the public schools is ineligible for membership in the council of a municipality. As a basis for this opinion, Section 4207, General Code, was cited. This section then read in part:

"* * *Each member of (city) council* * * shall not hold any other public office or employment, except that of notary public or member of the state militia* * *"
(Emphasis added)

The opinion went on to state that, as the position of school teacher is public employment, the two positions were incompatible.

In 1957, Section 731.02, supra, (formerly Section 4207, General Code) was amended by the Legislature and now reads in part as follows:

"* * *Each member of (city) council* * * shall not hold any other public office* * * and no such member may hold employment with said city* * *"

It should be noted here that similar changes were made by the Legislature to Section 731.12, Revised Code, relating to village council, which section before amendment read in part:

"* * *No member of the (village) legislative authority shall hold any other public office or employment, except that of notary public or member of the state militia* * *"
(Emphasis added)

In 1955, Section 731.12, supra, was changed by the

Legislature to read:

"* * *No member of the (village) legislative authority shall hold any other public office, except that of notary public or member of the state militia* * *and no such member may hold employment with said village* * *"

As can be seen, the language of these two statutes, as amended, is very close, and the changes resulting from amendment are identical.

In Opinion No. 6674, Opinions of the Attorney General for 1956, Page 447, the then Attorney General went into the impact of the changed language of Section 731.12, Revised Code, and stated:

"1. Section 731.12, Revised Code* * * does not prohibit a member of village council from holding other public office employment so long as such employment is not with said village."

It is my opinion that the legislative intent in relation to Section 731.02, supra, and the changes therein, is the same as announced in Opinion No. 6674, supra. I therefore hold that Section 731.02, supra, does not prohibit a member of the city council from holding other public employment so long as such employment is not with said municipality, or is not in opposition to some other statutory provision.

The above holding logically raises the next question. That is, is a person who is principal and teacher of a public school holding a public office?

Once again, the construction by the courts of Section 731.12, supra, can be viewed as a guide in construing Section 731.02, supra. In The State ex rel. Scarl v. Small, 103 Ohio App., 214, the court held, in the second paragraph of the Syllabus:

"2. A person employed as a teacher in a public school system is not holding a 'public office' within the meaning of that term as used in Section 731.12, Revised Code* * *"

Further, in Opinion No. 1288, Opinions of the Attorney General for 1927, at Page 2325, it was held that a school principal is not a public officer as that term is used in the constitution and statutes. Thus it follows that one filling the position of principal and teacher of a local elementary school is not holding a "public office" within the meaning of that term as used in Section 731.02, Revised Code.

As there is no specific statutory prohibition relating to the matter of the compatibility of the positions, the only question remaining to be answered is whether, under the common law rule respecting compatibility, one person can serve in both capacities. The rule involved is best stated in State ex rel. v. Gebert, 12 C.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."

Assuming that the duties involved can be carried out by one person, I can think of no circumstances in which either position would be subordinate to, or a check upon the other.

For these reasons, therefore, I am of the opinion that the position of a member of city council can be held simultaneously with that of principal and teacher of a local elementary school.