

3440.

COMPATIBLE-INCOMPATIBLE OFFICES—PERSON MAY SERVE AS MEMBER COUNTY CHILD WELFARE BOARD AND MEMBER PRIVATE WELFARE AGENCY—COMPATIBLE—PERSON MAY NOT SERVE AS COUNTY BUDGET COMMISSIONER AND MEMBER COUNTY CHILD WELFARE BOARD—INCOMPATIBLE—OVERRULED IN PART BY OPINION 3524, JANUARY 7, 1939.

*SYLLABUS:*

1. *No question of incompatibility of offices or violation of law arises when one person serves at the same time as member of the county child welfare board and member of a private welfare agency.*

2. *One person may not at the same time serve as budget commissioner and member of the county child welfare board as the duties of these offices make them incompatible.*

COLUMBUS, OHIO, December 22, 1938.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: This will acknowledge the receipt of your recent communication. Your letter reads as follows:

“May we respectfully request your opinion upon the following:

“1. May the offices of Member of the County Child Welfare Board, appointed under authority of Section 3092, General Code, and Member of a private welfare agency, be held by the same person at the same time?”

“2. May the position of County Budget Commissioner, a title used by an assistant clerk of the board of county commissioners who aids the board in the budget and appropriation matters, and Member of the County Welfare Board be held by the same person at the same time?”

Section 3092, General Code, referred to in your letter provides:

“In any county where such home has not already been provided, the board of county commissioners may enter into a contract for the care of its neglected or dependent children with a county children’s home in another county, or with any institution or association in the state which has for one of its objects the care of dependent or neglected children, provided such institution

or association has been duly certified by the division of charities, department of public welfare; or the board of county commissioners may pay reasonable board and provide suitable clothing and personal necessities as well as medical, dental and optical examination and treatment of dependent or neglected children who may be placed in the care of private families within the county. Provided that in each case such dependent or neglected children shall be duly committed to the aforesaid institution or association or placed in the care of a private family by the juvenile court as provided by law; or with the approval of the division of charities, department of public welfare, when in the judgment of the county commissioners the best interests of the dependent and neglected wards of the county will be subserved thereby, they may appoint a county child welfare board of five members to serve without compensation, such appointments to be subject, as far as applicable, to the provisions of Sections 3081 and 3082 of the General Code. Such board shall have the same powers and duties relative to dependent and neglected children as are now given to trustees of county children's homes, so far as applicable, particularly relating to the appointment of visitors for the finding and supervision of family homes for such children. Such a county child welfare board shall appoint a suitable person to serve as executive officer of the work under its supervision and upon such terms of remuneration as available funds will warrant."

Preceding this section are Sections 3081 to 3089, General Code, which provide for the general and special responsibilities of trustees of the county children's homes expressly referred to in Section 3092, supra. Of these sections, Section 3082-1, General Code, provides that accounts payable shall be examined, approved and paid by a majority of the trustees. By virtue of the same section the trustees are further charged with the inspection and examination of the whereabouts of wards which have been placed in homes or agencies for care. Section 3089, General Code, authorizes the trustees to contract with persons, hospitals and other agencies for the care and treatment of children needing special accommodation. These responsibilities all fall upon a member of the county child welfare board by virtue of Section 3092, supra.

Where a member of the child welfare board is also an official of a private welfare agency there is no question of incompatibility of offices presented, for an officer of a private agency is of course no public official. Moreover, an examination of those sections of the Ohio General Code prohibiting the interest of public officials in public contracts reveals no

section prohibiting the type of contract in question. Section 12912, General Code, refers to services but only includes officers and employees of municipal corporations and townships. Sections 12910 and 12911, General Code, refer only to contracts for property, supplies, and insurance. In view of these facts and the custom of strict interpretation of penal statutes, none of the sections above discussed can apply to the instant case.

There is, moreover, no general law which I can find which prohibits one person from holding the offices in question. No section of the Code requires a member of the county child welfare board to give full time service. I am, therefore, constrained to hold that one person may at the same time serve as a member of the county child welfare board and a member of a private welfare agency.

Before leaving this question, however, I cannot avoid commenting that inasmuch as a county welfare board member must approve payment of accounts with agencies and persons rendering services to the board, and must as a matter of official duty inspect and pass upon all homes and institutions wherein children under care of the Board are placed, it is at least an act of bad taste and questionable public policy for a board member to permit contractual relationships with a private agency of which he is a member. By such action he would certainly lay himself open to the suspicion of having used his official connection to further his private interests. Certainly this should be avoided to say nothing of any situation which would prevent the unhampered and responsible exercise of his duties as to examination and inspection of all places where children under care of the board are placed.

Your second question relates to one who serves as county budget commissioner and member of a county welfare board at the same time.

I am informed that the county budget commissioner is in fact an assistant clerk of the board of county commissioners who aid the board in budget and appropriation matters. Acting in such a capacity the budget commissioner has the responsibility of setting out appropriation schedules and budget estimates for the inspection and approval of the commissioners.

Under section 3092, *supra*, discussed herein, the county child welfare board is organized after the pattern of the boards of trustees for children's homes. Such being the case a member of the child welfare board would also have the responsibility of making up estimates to cover services and various expenses for the institutions and homes caring for their wards. In an Opinion of the Attorney General for 1934, Volume I, No. 2247, page 115, it was clearly set forth that certain administration expenses were a matter for the children's home trustees to determine and set in the first instance.

The time-honored common law rule as to incompatibility of offices may be found in Throop on Public Officers, Sections 33 and 34 wherein it is stated:

“Offices are said to be incompatible when from multiplicity of business in them they cannot be executed with care and ability, or when, their being subordinate and interfering with each other it induces a presumption that they cannot be exercised with impartiality and honesty.”

It follows that where one person is at the same time a member of the child welfare board and a county budget commissioner, he cannot in every instance exercise the duties of each office without having one office subordinate to or a check upon the other. As such, he is bound to review and in some manner pass upon estimates submitted by the welfare board of which he is a member through the county commissioners.

In view of this fact one person may not at the same time serve as budget commissioner and member of the county child welfare board.

In specific answer to your questions it is my opinion that,

1. No question of incompatibility of offices or violation of law arises when one person serves at the same time as member of the county child welfare board and member of a private welfare agency.

2. One person may not at the same time serve as budget commissioner and member of the county child welfare board as the duties of these offices make them incompatible.

Yours truly,

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3441.

BOARD OF EDUCATION—BOND ISSUE—PREPARATION OF RESOLUTION, NOTICES, LEGAL PAPERS, ETC. NOT SUCH DUTIES AS IMPOSED BY SECTION 4761 G. C.—BOARD HAS AUTHORITY TO EMPLOY AND COMPENSATE PERSON FOR SUCH WORK—CITY SOLICITOR MAY BE SO EMPLOYED—EXPENSE—TRIPS—HOW PAID—SERVICE FUND.

*SYLLABUS:*

1. *The preparation of a resolution, notices, certificates and other necessary legal papers that are required to be prepared in order for the*