

OPINION NO. 68-031

**Syllabus:**

The positions of teacher in a municipal school district and member of the board of trustees of a community college created by and operating under Chapter 3354, Revised Code, are compatible, and the positions may be held by the same person at the same time, provided it is physically possible to discharge the duties of both positions.

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To: Paul J. Mikus, Lorain County Pros. Atty., Elyria, Ohio  
By: William B. Saxbe, Attorney General, February 7, 1968

I have before me your request for my opinion on the question of whether the positions of teacher in a municipal school district and member of the board of trustees of a community college district are compatible.

A reading of Section 3319.07 et seq., Revised Code, relating to the employment of teachers, and of Chapter 3354, Revised Code, relating to the establishment and operation of community colleges, reveals no specific statutory prohibition against the arrangement described in your letter. In the absence of such a prohibition, the compatibility of the two positions in question must be tested under the common law doctrine of compatibility, which is stated in State ex rel. Attorney General v. Gebert, 12 C.C. (N.S.) 274, 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."

I have expressed the view in Opinion No. 1305, Opinions of the Attorney General for 1964, on the basis of the aforementioned test, that the positions of county treasurer and treasurer of a community college district are incompatible. After noting that the county treasurer is a member of the county budget commission by virtue of Section 5705.27, Revised Code, and that the budget of the community college district must be submitted to the county budget commissioners, pursuant to Section 5705.28, Revised Code, to determine the validity of certain tax levies imposed by the community college district, I concluded that, at least to a limited extent, the county budget commission performs a check upon and is superior to the board of trustees of a community college district and its treasurer, and that this results in the incompatibility of the offices which were the subject of that opinion.

However, in considering the statutes which determine the compatibility of the positions which are the subject of the present opinion, I can find no situation in which either position could be construed to be subordinate to, or a check upon, the other. Of course, whether it is physically possible to perform the duties of both positions at the same time is a question of fact to be determined in each individual case.

Therefore, it is my opinion and you are hereby advised that the positions of teacher in a municipal school district and member of the board of trustees of a community college created by and operating under Chapter 3354, Revised Code, are compatible, and the positions may be held by the same person at the same time, provided it is physically possible to discharge the duties of both positions.