

OPINION NO. 66-060

Syllabus:

The position of member of the board of education of a local school district and the position of township trustee of a township within that local school district are incompatible.

To: J. Warren Bettis, Columbiana County Pros. Atty., Lisbon, Ohio
By: William B. Saxbe, Attorney General, March 11, 1966

I have before me your request for my opinion which reads as follows:

"I have been requested by the Southern Local School District of Columbiana County to request your Opinion on the following set of facts: a newly elected member of the Southern Local School District Board of Education in Columbiana County resides in Brush Creek Township of Jefferson County. Southern Local School District encompasses part of Brush Creek Township and specifically the area in which Mr. Adams resides. There is no question that Mr. Adams does reside within the boundaries of Southern Local School District.

"Mr. Adams, the newly elected member was at the same time elected township trustee of Brush Creek Township in Jefferson County.

"The question therefore arises as to whether or not the position of township trustee of Brush

Creek Township in Jefferson County is compatible with that of member of the school board of Southern Local School District in Columbiana County which also encompasses part of Brush Creek Township in Jefferson County.

"I have read your opinion No. 951 of the 1949 Attorney General's Opinions which held in the syllabus as follows:

"The office of township trustee and the office of a member of a local board of education located within such township are incompatible offices and may not be held by the same person simultaneously."

"However, in this case there is a slightly different problem in that the board member is a township trustee in a different township than that of the school district except for a small territorial part.

"Would you therefore advise if under the circumstances related above Mr. Adams may serve as township trustee of Brush Creek Township, Jefferson County and at the same time serve as a board member of the Southern Local School District of Columbiana County part of which is located in Brush Creek Township, Jefferson County, Ohio."

There is no statutory prohibition against the same person holding simultaneously the office of township trustee and the position of member of a board of education of a local school district. It is therefore necessary to determine whether or not the two offices are incompatible at common law. The most frequently cited case establishing the common law rule of incompatibility in Ohio is State, ex rel. Attorney General v. Gebert, 12 O. C. C. (N.S.) 274, in which it is stated, at page 275:

"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 am aware of Opinion No. 951, Opinions of the Attorney General for 1949 at page 598 which you cite in your request.

Subsequent to that opinion I had occasion to write in Opinion No. 2202, Opinions of the Attorney General for 1958 at page 361 that the position of township trustee and clerk of a local school board are incompatible.

In that opinion I cited Sections 5705.01, 5705.28, 5705.31, 5705.32, and 5705.37, Revised Code, to show the manner in which the funds are allotted to different subdivisions. I then concluded by stating:

"Considering the above quoted statutes together, it is apparent that there may be times when the competition for available funds will place the township trustees and the local school

board in positions adversary to each other. And even though the clerk of the local school board occupies a ministerial position, the possibility of dual loyalties is such that objectivity may be difficult to maintain."

At that time I expressed the opinion that the positions of clerk of a local school board and township trustee were incompatible. It is even clearer that a member of the local school board and township trustee are incompatible, since the member of the school board has duties which are not just ministerial.

It is clear that this is so even where a local school district encompasses more than one township or parts thereof. If anything, these facts would tend to increase the possibility of competition for available funds.

It is therefore my opinion and you are hereby advised that the position of member of the board of education of a local school district and the position of township trustee of a township within that local school district are incompatible.