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THE COMPATIBILITY OF THE POSITIONS OF A MEMBER OF A LOCAL BOARD OF EDUCATION SIMULTANEOUSLY. §3313.85. Informal OAG No. 169, 1947.

SYLLABUS:

Under the provisions of Section 3313.85, Revised Code, one person may not at the same time serve as a member of a county board of education and as a member of a local board of education in the same county, (Informal Opinion No. 169, Informal Opinions of the Attorney General for 1947, followed and approved.)

Columbus, Ohio, June 21, 1960

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

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

“I have been requested by one of our local district school boards to obtain from you a formal opinion regarding the compatibility of the positions of a member of a local Board of Education and a member of the County Board of Education simultaneously. It is felt that this question is somewhat ‘moot’ in view of the positions taken by former Attorney Generals.

“We would call your attention to an Informal Opinion rendered February 6, 1947, being No. 169. This opinion apparently holds these positions to be incompatible. We would also like to

call your attention to the booklet put out by your office on the compatibility of public offices, at page 16, where it indicates that a member of the County School Board is compatible with being vice president of a rural board of education. The opinion rendered in 1931, at page 733."

Opinion No. 3272, Opinions of the Attorney General for 1931, page 733, mentioned in your letter, was predicated on the provisions of former Section 4728, General Code, which read as follows:

"Each county school district shall be under the supervision and control of a county board of education composed of five members, who shall be electors residing in the territory composing the county school district and *who may or may not be members of local boards of education*. The members of such county board in office when this act goes into effect shall continue in office until their successors are elected and qualified.'" (Emphasis added)

The conclusion reached in that opinion was that a vice-president of a board of education of a rural school district could be appointed as a member of the county board of education and occupy both positions concurrently.

The opposite conclusion reached in Informal Opinion No. 169, Informal Opinions of the Attorney General for 1947, to which reference is also made in your inquiry, was grounded on the fact that Section 4728, General Code, *supra*, had been in the meantime repealed and Section 4832, General Code, was regarded as in a measure controlling the question involved; on the provisions of Section 4831, *et seq.*, General Code, (now Section 4831.22, *et seq.*, Revised Code), whereby a new system of county planning and distribution of local school districts had been set up; and on the provisions of Section 4846, General Code (now Section 3313.85, Revised Code).

Section 4832, General Code, is now Section 3313.01, Revised Code, and reads:

"In county, local, and exempted village school districts, the board of education shall consist of five members *who shall be electors* residing in the territory composing the respective districts and shall be elected at large in their respective districts."

(Emphasis added.)

I note that the only qualification set forth in Section 3313.01, *supra*, for members of a county or local board of education is that such members be electors residing in the territory of the school district in which they are elected. While the express provision in the repealed Section 4728, General Code, to the effect that members of a county board of education might or might not be members of local boards of education, is not contained in Section 3313.01, *supra*, neither does the latter expressly prohibit a person from serving simultaneously on both such boards.

In 32 Ohio Jurisprudence, Public Officers, Section 46, pages 906 and 907, it is stated:

“It is elementary that one who is an elector is entitled to hold the office to which he is elected *unless there is some contrary statutory provision or the offices are inherently incompatible.*”

(Emphasis added.)

In 32 Ohio Jurisprudence, Public Officers, Section 48, pages 908, 909, it is stated:

“One of the most important tests as to whether offices are compatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important principal duties, or subject to the supervision or control of the other, * * * 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.”

In Informal Opinion No. 169, *supra*, as already noted, it was ruled that a person could not at the same time be a member of a county and of a local board of education. In that opinion it is stated:

“Section 4831 et seq., General Code, provides a new system of county planning and territorial redistribution of local districts. Certain duties are imposed upon the county board, by way of initiating plans calling for such territorial changes. It is true that these changes can not become effective unless and until approved by the Superintendent of Public Instruction of the state. Nevertheless, the Superintendent can not himself initiate such changes, and it may therefore be said that the authority and responsibility for the same are divided between the county board and the Superintendent of Public Instruction. In view, therefore, of the fact that the action taken by the county board may result either in the dissolution of a local district or a subtraction from or addition to its territory, without the approval of the local board, it appears

to me that the county board does, in a measure, exercise an authority over the local board which under the well recognized principles of law would render the two positions incompatible. For the same reason it might give a member of the local board who was also a member of the county board, an undue influence in shaping the territorial boundaries of certain districts, to the advantage of his own and the disadvantage of others.

“Another provision of the law which appears to me to render the two positions in question incompatible is that contained in Section 4846 General Code, (now Section 3313.85, Revised Code) whereby the county board is authorized to act as the local board and perform all duties imposed upon it in event the local board fails to perform such duties or fails to fill a vacancy in its membership within the period limited. The effect of this statute is to give the county board a certain measure of control over a local board and in disputed cases as to the alleged failure of the local board to perform its duties, a conflict might arise in which a person who is a member of both boards would find himself on both sides of a dispute.” (Parenthetical matter added)

I am in full accord with the reasoning and the conclusion of my predecessor as stated in Informal Opinion No. 169, *supra*, and such opinion is therefore followed and approved.

Accordingly, answering your specific question, it is my opinion and you are advised that under the provisions of Section 3313.85, Revised Code, one person may not at the same time serve as a member of a county board of education and as a member of a local board of education in the same county. (Informal Opinion No. 169, Informal Opinions of the Attorney General for 1947, followed and approved.)

Respectfully,
MARK MCELROY
Attorney General