

Note from the Attorney General's Office:

1949 Op. Att'y Gen. No. 49-1083 was overruled by 1983
Op. Att'y Gen. No. 83-070.

1083

COMPATIBLE — INCOMPATIBLE — BOARD OF EDUCATION,
LOCAL, CLERK—NOT A MEMBER OF BOARD—MAY SERVE
AS MEMBER OF COUNTY BOARD OF EDUCATION.

SYLLABUS:

A person who is a clerk of a local board of education but not a member of such board may also serve as a member of the county board of education.

Columbus, Ohio, October 6, 1949

Hon. Louis F. Sheridan, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

I am in receipt of your communication which requests my opinion as follows:

“May a person who is the clerk of a local board of education, but who is not a member of said local board, also serve as a member of the county board of education.”

In reply to this letter, your attention is first directed to Opinions of the Attorney General for 1933, at page 1213, which says:

“Public offices are incompatible when made so by express provision of constitution or statute, or when rendered such by operation of the common law test of incompatibility.”

An examination of the Ohio Constitution and applicable statutes discloses no express provision which would prevent a member of the county board of education from also serving as clerk of a local board of education at the same time.

The remaining problem is, therefore, whether or not such a combination of offices may be held by one person at the same time in view of the common law rule.

The common law test of incompatibility is well expressed in the case of *State ex rel. v. Gebert*, 12 C. C. (N. S.) 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.”

On the basis of this test, the only statutory provision before me which might render the two positions incompatible is that contained in Section 4846, General Code, which recites as follows:

“* * * If the board of education of any local school district fails to perform the duties imposed upon it by law * * * the county board of education in which such district is located, * * * shall act as such board of education * * *.”

This provision gives the county board authority to act as the local board under certain circumstances and the question thus arises whether the county board, acting in place of the local board, may exercise powers affecting the clerk of such local board.

However, the possibility of incompatibility of positions afforded by this statutory provision is overcome by reference to Section 4841, General Code, which specifically states that the clerk of a local board of education may or may not be a member of the same local board.

The powers and duties of a clerk of the board of education are discussed in Vol. 36, Ohio Jur., page 160, Sec. 127, as follows:

“The clerk is but the bookkeeper of the board of education, having charge of its records and accounts, and his duties are mostly of a clerical and ministerial character.”

Since a member of the county board of education can exercise no powers or duties affecting the clerk of the local board of education and the clerk's powers and duties are largely restricted to ministerial acts, it becomes more apparent that neither of these positions is subordinate to or in any way a check upon the other.

The sole remaining question is whether or not it is physically possible for one person to hold the two positions referred to in your communication, and this question is discussed in Opinions of the Attorney General

for 1933, at page 360, where it was held a question of fact rather than of law whether or not it is physically possible for one person to occupy two given offices at one time.

It is accordingly my opinion then, in specific answer to your communication, that a person who is a clerk of a local board of education but not a member of such board may also serve as a member of the county board of education.

Respectfully,

HERBERT S. DUFFY,
Attorney General.