

OPINION NO. 83-070**Syllabus:**

The positions of a member of a county board of education and administrator of a local school district within the same county are incompatible. (1949 Op. Att'y Gen. No. 1083, p. 726, overruled.)

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 1, 1983

I have before me your request for my opinion concerning whether an individual who is the administrator for a school board may also serve as a member of the county school board. I understand that the administrator is employed by a local school board which is in the same county served by the county school board.

1979 Op. Att'y Gen. No. 79-111 sets forth the seven criteria for determining whether two public positions are compatible. Two positions are considered incompatible if, inter alia, one is subordinate to, or a check upon the other, or if an individual serving in both positions would be subject to a conflict of interest. See State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274 (Cir. Ct. Franklin County 1909).

In State ex rel. Hover v. Wolven, 175 Ohio St. 114, 191 N.E.2d 723 (1963), as well as in 1960 Op. Att'y Gen. No. 1491, p. 432, it was concluded that one person could not simultaneously serve as a member of a county board of education and as a member of a local board of education in the same county. Cited in support of this conclusion were R.C. 3313.85 (providing that, under certain circumstances, the county board must act as the local board and perform the duties of the local board), R.C. 3311.08 (authorizing a local board to exempt itself from the supervision of the county board), R.C. 3311.22 (authorizing a county board to transfer a part of or all of a local school district to an adjoining local district or districts), and R.C. 3311.26 (providing that a county district may propose the creation of a new local district from one or more existing local school districts or parts thereof, and authorizing the county board to appoint the board members of the district). These statutes "make the local board subordinate to the county board. The latter supervises the former. In some instances the county board takes over entirely the responsibilities and duties of the local board. The county board may even terminate the existence of the local board." State ex rel. Hover v. Wolven, 175 Ohio St. at 118, 191 N.E.2d at 726. The members of a local board were seen as subordinate to the members of a county board, and thus the positions of local school board member and county school board member were deemed to be incompatible.

Although your question involves an administrator for a local school district, rather than a board member, I perceive the same problems as existing with regard to one person serving as a county board member and an administrator for a local board as were determined in State ex rel. Hover v. Wolven to render the positions

of county board member and local board member incompatible. See 1927 Op. Att'y Gen. No. 1288, vol. III, p. 2325. The county board exerts great responsibility and control over a local board. Thus, employees of a local board are, in many instances, subordinate to a county board of education. In addition, a person who served in both positions would be subject to a conflict of interest, or divided loyalties in executing his duties as a county board member with regard to the local board.

I draw your attention particularly to R.C. 3319.02, which provides for the appointment of administrators by the boards of education of the various school districts. R.C. 3319.02 reads in part:

The board of education of each school district may appoint one or more assistant superintendents and such other administrators as are necessary. . . .

. . . In local school districts, assistant superintendents, principals, assistant principals, and other administrators shall only be employed or reemployed in accordance with nominations of the superintendent of schools of the county district of which the local district is a part except that a local board of education, by a majority vote, may reemploy any assistant superintendent, principal, assistant principal, or other administrator whom the county superintendent refuses to nominate after considering two nominees for the position. (Emphasis added.)

I believe that this provision creates an impermissible conflict of interest between the positions of an administrator for a local school board and the member of the board of education of a county school district. The employment of an individual as an administrator for a local school district depends on the nomination of the superintendent of the county school district. Pursuant to R.C. 3319.01, the board of education of a school district is empowered to appoint, reappoint, and terminate the contract of a superintendent. The board of education evaluates the superintendent, and fixes his compensation, which may be increased during the term of his contract.

Public officials who have appointive powers may not serve in a position to which they may appoint. See 1979 Op. Att'y Gen. No. 79-086. Although a county board member does not have the direct authority to nominate an administrator of a local school board, he does have the authority to reappoint, evaluate, compensate, and terminate the contract of the superintendent of the county school district, who does have the power to nominate such an administrator. Thus, a county board member would be in a position to exert influence over the superintendent in order to secure his nomination as an administrator of a local school district. Although I am not suggesting, of course, that the individual involved in this instance would actually engage in improper conduct, I believe that this situation creates the possibility of a conflict of interest between the positions of county school board member and administrator for a local school board so as to render the positions incompatible.

I am aware of 1949 Op. Att'y Gen. No. 1083, p. 726, wherein it was concluded that a county school board member could hold the position of clerk (now treasurer) of a local school board. It was stated that, "the possibility of incompatibility of positions afforded by [what is now R.C. 3313.85] is overcome by reference to Section 4841, General Code [now R.C. 3313.22], which specifically states that the clerk of a local board of education may or may not be a member of the same local board." 1949 Op. No. 1083 at p. 727. The opinion went on to state that, "[s]ince 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." *Id.* In light of the discussion above, I believe that 1949 Op. No. 1083 was erroneous in concluding that a clerk (now treasurer) of a local school board is not subordinate to a county school board member. I note that R.C. 3313.22 now states that a school

board treasurer may not be a member of the school board or regularly employed by the board. 1949 Op. Att'y Gen. No. 1083, p. 726 is hereby overruled.

In conclusion, it is my opinion, and you are advised, that the positions of a member of a county board of education and administrator of a local school district within the same county are incompatible. (1949 Op. Att'y Gen. No. 1083, p. 726, overruled).