

OPINION NO. 69-107

Syllabus:

A position as a member of a board of education of a local school district and the position of administrator of a county mental retardation program are incompatible and may not be held concurrently by the same person.

To: Dominick E. Olivito, Jefferson County Pros. Atty., Steubenville, Ohio
 By: Paul W. Brown, Attorney General, August 27, 1969

I have before me your request for my opinion which poses the following questions:

"1. Is the position of member of a local school board incompatible with the position of Administrator of a mental retardation program, when such position is of the classified position protected under the Civil Service laws?

"2. If the position of member of a local school board (which is a part time job and carries no compensation) is not incompatible on its face with the position of Administrator of a mental retardation program of a county, a position covered and protected by the Civil Service Laws, does it become incompatible by reason of the member of the school board must be elected by the voters of the school district to that position, or must be appointed to fill an unexpired term of another so elected?

"3. If it is unlawful to hold the position of member of a local board, which is filled by a non-partisan ballot, or in accordance with law and a position under the classified services of the Civil Service law, then would not this prohibition be unconstitutional in light of the Supreme Courts of Ohio and the United States of America decisions expanding the Constitutional guarantees as a restraint in the pursuit of employment and, the right to earn a living, particularly is this so since the position as member of the local board of education is a non-paying position and there is no conflict in the two specified positions that would affect the public's interest?"

With respect to the first question, Section 143.08, Revised Code, reads in part as follows:

"* * * * *"

"(B) The classified service shall comprise all persons in the employ of the state and the several counties, * * * not specifically included in the unclassified service, * * *."

"* * * * *"

The position of administrator of a county mental retardation program is not specifically included in the unclassified service and is therefore a classified position.

Section 143.41, Revised Code, provides in part as follows:

"No officer or employee in the classified service of the state, the several counties * * * shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution * * * for any candidate for public office; * * * nor shall any officer or employee in the classified service of the state, the several counties * * * take part in politics other than to vote as he pleases and to express freely his political opinions."

I would refer you to Opinion No. 3074, Opinions of the Attorney General for 1958, in which my predecessor concluded that:

"It is my opinion, and you are advised that under the provisions of Section 143.41, Revised Code, a person holding a position in the classified service could not at the same time become a candidate for, be elected to, or hold the office of member of a local board of education."

Therefore, in answer to your first two questions, a position as a member of a board of education of a local school district is incompatible with the position of administrator of a county mental retardation program, a classified position, based on the prohibition set forth in Section 143.41, suora.

With respect to your third question, it is the policy of the Office of the Attorney General to refrain from issuing opinions concerning the constitutionality of enacted statutes.

It is therefore my opinion and you are hereby advised that a position as a member of a board of education of a local school district and the position of administrator of a county mental retardation program are incompatible and may not be held concurrently by the same person.