

## OPINION NO. 870

**Syllabus:**

Neither the position of dog warden employed by the county commissioners nor that of school bus driver employed by the city board of education in the same county is subordinate to or in any way a check upon the other and, therefore, one person may discharge the duties of both positions provided that it is not physically impossible to do so, which is a factual matter determined by their required time of service in each position and not a matter of legal opinion

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**To: William H. Conner, Hardin County Pros. Atty., Kenton, Ohio**  
**By: William B. Saxbe, Attorney General, February 12, 1964**

You request my opinion on the following question:

"Is the position of Dog Warden employed by the County under Section 955.12, Ohio Revised Code, compatible with the same person being employed as a school bus driver by the Kenton City School District under Section 3327.01, et seq., Revised Code of Ohio?"

As there is no constitutional or statutory provision prohibiting the same person from holding both of such positions, the matter must be decided by the common law rule. Such rule is clearly stated in State of Ohio, ex rel. Attorney General v. Frank Gebert, 12 O.C.C. (N.S.) 274, in which it was held that the same person may hold office of mayor of a city and member of Congress of the United States. The following is quoted 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."

The first paragraph of Section 955.12, Revised Code, is as follows:

"The board of county commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation as such board deems necessary to enforce sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code."

The remainder of such section prescribes the duties and powers of such warden and deputies relating entirely to keeping a record of all dogs in the county, the seizure and impounding of certain dogs, the investigation of all claims for damages to livestock by dogs, making weekly reports thereof to the board, and the exercise of police powers in enforcing the statutes relating to dogs. Sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, Revised Code.

Section 3327.01, Revised Code, authorizes the city board of education to provide, under certain circumstances, transportation to and from school for pupils.

Section 3327.10, Revised Code, states the required qualifications of each school bus driver as to his age, moral character, qualifications physically and otherwise for such position; and requires annual physical examinations ascertaining his physical fitness for such employment.

It is, therefore, my opinion and you are advised that neither the position of dog warden employed by the county commissioners nor that of school bus driver employed by the city board of education in the same county is subordinate to or in any way a check upon the other and, therefore, one person may discharge the duties of both positions provided that it is not physically impossible to do so, which is a factual matter determined by their required time of service in each position and not a matter of legal opinion.