

between Walters Electric Company, Canton, Ohio, and the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of Kent State University, Kent, Ohio, for the construction and completion of Contract for Electric Service for a project known as Service Extensions for Engleman Hall, Kent State University, Kent, Ohio, as set forth in Item 3 of the Form of Proposal dated July 30, 1938, which contract calls for the total expenditure of three thousand four hundred dollars (\$3,400.00).

You have also submitted the following papers and documents in this connection: Encumbrance record EF2243, dated August 25, 1938, estimate of cost, division of contract, notice to bidders, proof of publication, workmen's compensation certificate showing the contractor having complied with the laws of Ohio relating to compensation, the form of proposal containing the contract bond signed by the Century Indemnity Company of Hartford, Connecticut, its power of attorney for the signer, its financial statement and its certificate of compliance with the laws of Ohio relating to surety companies, the recommendations of the State Architect and Engineer, Board of Trustees and Director of Public Works, letter of certification from the Auditor of State showing that the necessary papers and documents are on file in said office, controlling board releases, and the tabulation of bids received on this project.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other documents submitted in this connection.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3007.

OFFICES COMPATIBLE—PUBLIC SCHOOL TEACHER—CITY  
—MEMBER CITY CIVIL SERVICE COMMISSION—PRO-  
VISO—PHYSICALLY POSSIBLE TO PERFORM DUTIES OF  
BOTH POSITIONS.

*SYLLABUS:*

*A public school teacher of a city may also hold office as member of the City Civil Service Commission since the responsibilities of the said teacher do not include power to appoint, promote, lay-off, or suspend em-*

*ployees or other officers of the city school district, providing it is physically possible to perform the duties of both positions.*

COLUMBUS, OHIO, September 21, 1938.

HON. CARL W. SMITH, *Chairman, Civil Service Commission of Ohio, State Office Building, Columbus, Ohio.*

DEAR SIR: This will acknowledge the receipt of your recent communication. Your letter reads in part as follows:

"A teacher in the Public Schools of Massillon, Ohio, who in such capacity is in the employ of the Massillon Board of Education, is also recently appointed a member of the municipal civil service commission of that city, and receives a compensation for both positions.

\* \* \* \* \*

We desire to respectfully request your opinion as to whether two such positions are compatible."

Section 486-19, General Code, provides for the appointment, term and powers of a Municipal Civil Service Commission. The section contains no express prohibition as does Section 486-3, General Code, forbidding Municipal Civil Service Commissioners from holding other offices. Therefore, in determining the compatibility or incompatibility of the offices in question, we must turn to the general common law rule as to incompatibility.

The following statement of this rule appears in Throop On Public Officers, Section 33:

"Offices are said to be incompatible when from multiplicity of business in them they can not be executed with care and ability, or when, their being subordinate and interfering with each other, it induces a presumption that they cannot be exercised with impartiality and honesty."

Further examination of the code sections relating to duties of Municipal Civil Service Commissioners reveals that under Section 486-19, General Code, Commissioners must examine applicants and certify names for appointment to all appointing officers in the city and city school district. Such being the case the commission acts as a check upon all city and school district officers having power of appointment. The Municipal Civil Service Commission also conducts examinations for positions in the classified service for the city and city school district. Section

486-2, General Code, further requires a certification from the Municipal Civil Service Commission before employees in the classified service can receive their pay. Section 486-22, General Code, gives the Municipal Civil Service Commission power to investigate all officers, boards and commissions having power to appoint, lay-off, reduce, suspend or remove officers or employees.

Comparing these obligations and duties with those of a teacher in the public schools of a city, there is apparently no incompatibility. A teacher by virtue of Section 486-8, General Code, paragraph 7, is in the unclassified service and there would be, therefore, no certification or examination involved. Moreover, an ordinary teacher in a public school does not as a rule have any power to appoint, suspend, lay-off, reduce or remove employees. A most helpful discussion of such a situation may be found in the Annual Report of the Attorney General for 1914, Volume I, page 404. The ruling given therein in which I concur was that a member of a municipal civil service commission cannot hold an office or position under the city or city school district if such officer has by virtue of his office a power to appoint, promote, lay-off, or suspend officers and employees, and further that such a commissioner may not hold a position in the classified service of a city or city school district.

It appears that the duties of an ordinary school teacher do not come within either prohibition. It is therefore my opinion that a public school teacher of a city may also hold office as member of the City Civil Service Commission since the responsibilities of the said teacher do not include power to appoint, promote, lay-off, or suspend employees or other officers of the city school district, providing it is physically possible to perform the duties of both positions.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*