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INCOMPATIBLE OFFICE—MEMBER OF CITY BOARD OF  
HEALTH AND CITY BOARD OF EDUCATION.

## SYLLABUS:

The office of member of a city board of health and that of member of a city board of education are incompatible.

Columbus, Ohio, November 1, 1950

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“A question has arisen as to whether the office of a member of a city board of education is compatible with the office of a member of a city board of health.

“Would you kindly advise me as to whether it is lawful and compatible for one and the same person to serve at the same time as a member of a city board of education and a member of a city board of health of the same city.”

The common law rule on dual office holding is stated in 100 A. L. R., 1164, in the following language:

“It is a well-settled rule of the common law that a person cannot at one and the same time rightfully hold two offices which are incompatible, \* \* \*”

The test of incompatibility of public offices in Ohio is stated in 32 O. Jur. 908, Section 48, as follows:

“It was early held that the test of incompatibility was not that it was physically impossible for the officer to perform the duties of one office because he was at that time elsewhere performing the duties of the other, but the distinction was in an inconsistency in the functions of the office. One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other,—as an officer who presents his personal account for audit

and at the same time is the officer who passes upon it,—or is in any way a check upon the other, or where a contrariety and antagonism would result in an attempt by one person to discharge the duties of both.”

This statement is supported by the opinions and decisions in *State, ex rel. Wolf v. Shafer*, 6 O. N. P. (NS) 219; *State, ex rel. Attorney General v. Gebert*, 12 O. C. C. (NS) 274; and *Mason v. State, ex rel. McCoy*, 58 O. S. 30.

In applying these rules to the situation you describe it becomes necessary first to ascertain whether any of the duties and responsibilities of the offices of member of a city board of education and member of a city board of health are in such conflict with each other as would subject one office to any supervision or control by the other. In this connection we find the following provisions in Section 4424, General Code:

“The board of health shall abate all nuisances and may remove or correct all conditions detrimental to health or well-being found upon school property by serving an order upon the board of education, school board or other person responsible for such property, for the abatement of such nuisance or condition within a reasonable but fixed time. A person failing to comply with such order, unless good and sufficient reason therefor is shown, shall be fined not to exceed one hundred dollars. The board may appoint such number of inspectors of schools and school buildings as it deems necessary to properly carry out these provisions.”

It is quite clear that this statute imposes a duty on a member of a city health board to participate in the making and enforcement of orders pertaining to health measures, such orders being directed to the members of the city board of education. Accordingly, where one individual is a member of both boards it would become his duty as a member of the health board to participate in the making of an order directed to himself as member of the education board. This situation inescapably gives rise to a division of loyalty of such individual between his two offices, and where such a division of loyalty exists the individual concerned will find it impossible to devote such unprejudiced attention to the duties of either office as sound public policy requires.

In addition to this specific authority granted to the board of health, Sections 4413, 4420 and 4421, General Code, confer broad general powers on this board to prescribe and enforce health measures, and it is easily

possible that any of such measures, in a proper situation, could take the form of orders directed to a city board of education, and thus give rise to a case of conflict and antagonism between the two offices.

Accordingly, in specific answer to your question, it is my opinion that the office of member of a city board of health and that of member of a city board of education are incompatible.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.