

2202

COMPATIBILITY — TOWNSHIP TRUSTEE AND CLERK,  
BOARD OF EDUCATION, LOCAL SCHOOL DISTRICT — IN-  
COMPATIBLE.

SYLLABUS:

The positions of township trustee and clerk of a local school board are incompatible and may not be held by the same person.

Columbus, Ohio, June 6, 1958

Hon. Paul N. McKinley, Prosecuting Attorney  
Hardin County, Kenton, Ohio

Dear Sir:

I have before me your request for my opinion in which you ask whether the office of township trustee is compatible with the position of clerk of a local board of education.

There is no statutory prohibition against the same person holding simultaneously the office of township trustee and the position of clerk of a

local board of education; therefore, we must determine whether or not the two offices are incompatible at common law. The most frequently cited case establishing the common law rule of incompatibility in Ohio is *State, ex rel. Attorney General v. Gebert*, 12 O. C. C. (N.S.) 274, in which it is stated, 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.”

We may note that Section 5705.28, Revised Code, provides in part:

“On or before the fifteenth day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority, or in the case of a municipal corporation, with its chief executive officer, before the first day of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the bureau of supervision and inspection of public offices. \* \* \*”

Section 5705.01, Revised Code, defines subdivision as:

“(A) ‘Subdivision’ means any county, municipal corporation, township, township fire district, township waste disposal district, or school district, except the county school district.”

After the county auditor has presented the budgets to the budget commission, as provided in Section 5705.31, Revised Code, the commission adjusts the estimates for each fund, as shown by such budgets, so as to distribute available funds. Section 5705.32, Revised Code, reads in part as follows:

“Before the final determination of the amount to be allotted to each subdivision from any source, the commission shall permit representatives of each subdivision and of each board of public library trustees to appear before it to explain its financial needs.”

Section 5705.37, Revised Code, provides in pertinent part:

“The taxing authority of any subdivision which is dissatisfied with any action of the budget commission may, through its fiscal officer, appeal to the board of tax appeals within thirty days after the receipt by such subdivision of the official certificate

of notice of such action of said commission. In like manner, but through its clerk, the board of trustees of any public library of a subdivision whose fiscal officer is a member of the budget commission may appeal to the board of tax appeals. The board of tax appeals shall forthwith consider the matter presented to the commission, and may modify any action of the commission with reference to the budget, the estimate of revenues and balances, or the fixing of tax rates. The finding of the board of tax appeals shall be substituted for the findings of the commission, and shall be certified to the county auditor and the taxing authority of the subdivision affected, or to such board of public library trustees affected, as the action of such commission under sections 5705.01 to 5705.47, inclusive, of the Revised Code.”

Considering the above quoted statutes together, it is apparent that there may be times when the competition for available funds will place the township trustees and the local school board in positions adversary to each other. And even though the clerk of the local school board occupies a ministerial position, the possibility of dual loyalties is such that objectivity may be difficult to maintain.

Therefore, it is my opinion that the position of township trustee and clerk of a local school board are incompatible and may not be held by the same person.

Respectfully,  
WILLIAM SAXBE  
Attorney General