

OPINION NO. 84-003**Syllabus:**

The positions of teacher's aide in a local school district and member of the county board of education in the same county are incompatible.

To: Ronald S. Dvorachek, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 21, 1984

I have before me your request for an opinion in which you raise the following issues:

1. May a teacher's aide employed by a local school district also serve as a member of the county board of education of the same county?

2. May the same teacher's aide serve on the county board of education as a member, if her husband is superintendent of the local school district employing her as a teacher's aide?

1979 Op. Att'y Gen. No. 79-111 sets forth seven criteria for determining whether two public positions are incompatible. Two positions are considered incompatible if, inter alia, one is subordinate to or a check upon the other, or if an individual serving in both positions would be subject to a conflict of interest. See State ex rel. Attorney General v. Gebert, 12 Ohio St. CC. (n.s.) 274 (Cir. Ct. Franklin County 1909).

In examining the subordination of a local school board to a county board of education, I stated in 1983 Op. Att'y Gen. No. 83-070:

In State ex rel. Hover v. Wolven, 175 Ohio St. 114, 191 N.E.2d 723 (1963), as well as in 1960 Op. Att'y Gen. No. 1491, p. 432, it was concluded that one person could not simultaneously serve as a member of a county board of education and as a member of a local board of education in the same county. Cited in support of this conclusion were R.C. 3313.85 (providing that, under certain circumstances, the county board must act as the local board and perform the duties of the local board), R.C. 3311.08 (authorizing a local board to exempt itself from the supervision of the county board), R.C. 3311.22 (authorizing a county board to transfer a part of or all of a local school district to an adjoining local district or districts), and R.C. 3311.26 (providing that a county district may propose the creation of a new local district from one or more existing local school districts or parts thereof, and authorizing the county board to appoint the board members of the district). These statutes "make the local board subordinate to the county board. The latter supervises the former. In some instances the county board may even terminate the existence of the local board." State ex rel. Hover v. Wolven, 175 Ohio St. at 113, 191 N.E.2d at 726. The members of a local board were seen as subordinate to the members of a county board, and thus the positions of local school board member and county school board member were deemed to be incompatible.

I also took note of R.C. 3319.02 which reads in part:

The board of education of each school district may appoint one or more assistant superintendents and such other administrators as are necessary. . . .

. . . In local school districts, assistant superintendents, principals, assistant principals, and other administrators shall only be employed or reemployed in accordance with nominations of the superintendent of schools of the county district of which the local district is a part except that a local board of education, by a majority vote, may reemploy any assistant superintendent, principal, assistant principal, or other administrator whom the county superintendent refuses to nominate after considering two nominees for the position. (Emphasis added.)

In arriving at the conclusion that the positions of administrator for a local school board and member of a county board of education are incompatible, much reliance was placed upon the legal principles set forth in State ex rel. Hover v. Wolven, R.C. 3319.02, and the general principle that public officials who have appointive powers may not serve in a position over which they exercise such powers. See 1979 Op. Att'y Gen. No. 79-086. The concern expressed in Op. No. 83-070 was that:

[a]lthough a county board member does not have the direct authority to nominate an administrator of a local school board, he does have the authority to reappoint, evaluate, compensate, and terminate the contract of the superintendent of the county school district, who does have the power to nominate such an administrator. Thus, a county

board member would be in a position to exert influence over the superintendent in order to secure his nomination as an administrator of a local school district. Although I am not suggesting of course, that the individual involved in this situation would actually engage in improper conduct, I believe that this situation creates the possibility of a conflict of interest between the positions of county school board member and administrator for a local school board so as to render the positions incompatible.

The same rules of law and the line of reasoning employed in Op. No. 83-070 are relevant to the instant matter as well. In cases where the county board of education takes over the management of a local school system within a county district, by virtue of the authority vested in the county school system by the terms of R.C. 3313.85, the employees of such local school systems, while the county board is exercising the functions of the local board, bear the same relation to the county board as they would bear to the local board at other times. As such it is clear that an incompatibility would exist between the duties of such employees and that of the members of the county board. Similarly, when a county board of education becomes involved in the creation of new local school districts, R.C. 3313.231, R.C. 3311.22, the duties to initiate plans calling for territorial changes may lead to the dissolution of a local district or a subtraction from or addition to its territory, without the approval of a local board. Under the exercise of authority of a county board of education over the local board, an employee of a local board, such as a teacher's aide, might have, as a member of the county board, undue influence in shaping the territorial boundaries of certain districts, to his own advantage and the disadvantage of others. Although this incompatibility would not exist except upon the happening of certain contingencies, the positions may still be said to be incompatible before the contingencies arise. It is readily apparent that when an employee is employed by contract for a definite time, as are teacher's aides of the schools in a local district, R.C. 3319.088, if there is a possibility of the contingency arising during the term of the contract of employment, such possibility, if not remote or speculative, would make the positions incompatible.

Finally, the local superintendent is responsible for directing district employees, R.C. 3319.01; he in turn is subject to appointment by the local school board after recommendation by the county superintendent. R.C. 3319.01. The county superintendent is appointed by the county board of education. R.C. 3319.01. In this instance the positions of teacher's aide and member of a county board of education are incompatible for the reason that a teacher's aide who serves as a member of a county board of education would be placed in a position of appointing the person, who would in turn nominate to the local school board the person who will serve as the local school district superintendent, i.e., the teacher's aide's superior. The teacher's aide would, at least indirectly, be a check upon her own superior.

Since the incompatibility of the positions is determined by an analysis of the first issue that you have raised, it is not, therefore, necessary for the purposes of this opinion to examine the second issue.

It is, therefore, my opinion, and you are advised, that the positions of teacher's aide in a local school district and member of the county board of education in the same county are incompatible.

¹ R.C. 3319.01 does allow as an exception, the employment or reemployment of a person as superintendent of the local school district, who was not recommended by the county superintendent, provided the employment is done upon a three-fourths vote of the local school board's full membership and after the local school board has considered two nominations made by the county superintendent.