

In view of the foregoing, and in specific answer to your questions, it is my opinion that the vacancy referred to in your letter may be filled by the congressional district committee of the tenth district, and that it is the duty of the board of deputy state supervisors of elections of the several counties in the district to place the name of the candidate selected by such committee upon the ballots, either by causing said ballots to be reprinted, by printing the name of the candidate in the space provided therefor on the ballots already printed, or by inserting the name of such candidate by the use of adhesive slips or pasters.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2697.

VACATION—PAY FOR VACATION IN ANNUAL SALARY OF EMPLOYEE OF BOARD OF EDUCATION—MAY BE ADDITIONALLY COMPENSATED IF EMPLOYED AS SCHOOL LIBRARIAN DURING SAID VACATION PERIOD.

*SYLLABUS:*

*An employe of the board of education, whose duties are to act as librarian for school libraries and who is employed on an annual salary, with the understanding that he is to have one month's vacation with pay, may, during his vacation period, be legally employed by the board of education, or board of trustees of a school library and paid for services performed during that time.*

COLUMBUS, OHIO, October 11, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion in answer to the following question:

“When employes of a Board of Education, whose duties are to act as librarians for school libraries are employed at an annual salary, with the understanding that they are to have one month's vacation with pay—may such employes be legally compensated in addition to their salary for services performed during the period of their vacation?”

I assume that the contract of employment to which your letter refers was entered into under Section 7631, General Code, which provides:

“The board of education of any school district may provide for the establishment, control and maintenance of a school library or libraries for the purpose of providing school library service to the pupils under its jurisdiction, or may contract with any public library board, association, or other organization operating a public library in a community, to furnish such school library service, the board of education paying all or part of the expense thereof, including the salaries of school librarians, as and for compensation for the service rendered.”

Your attention is also directed to Sections 7635 and 7637, General Code, which read as follows:

Section 7635. "The board of education of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided.

Within ninety days after the taking effect of this act, boards of education administering public libraries directly, shall appoint such boards of library trustees, and transfer to them all public library property, real and personal."

Section 7637. "In its own name, such library board shall hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all moneys collected or received from any source for library purposes for such district. It may employ a librarian and assistants, but previous to such employment their compensation shall be fixed."

Public employes who, by the terms of their contract of employment, are granted vacations with pay are free to occupy the time of the vacation period as they see fit. The time is theirs to employ as they wish, and the public, by which they are employed, has no call on such employes' time during this period. If they choose to work and earn money during the vacation period they have the same right to do so as though they were on vacation without pay, or as though they were on vacation in private employment.

That being the case, the fact that the employment in which they engage is a public employment, even though it be for the same political subdivision or taxing unit as is their regular employment, does not, in my opinion, change the situation or preclude their being paid for services performed during the vacation period.

It has been held that public officers may, under certain circumstances, hold two public positions at the same time and be paid for performing the duties of each of these positions.

In Ruling Case Law, Vol. 22, p. 535, it is said:

"In the absence of express or implied statutory provision to the contrary, an officer who holds two or more separate and distinct offices, not incompatible with each other, to each of which compensation is attached, may recover the compensation provided by law for each office."

In *Seiter vs. State*, 160 Ind. 605, it is said:

"Where a person who is the incumbent of a public position is required by law to perform the duties of another position, not incompatible with the first, he in the absence of any provision of law to the contrary, is entitled to receive the compensation attached to each of the positions."

In each of the following and many other cases it was held that the holder of two public offices was entitled to the compensation attached to each of the offices held by him: Attorney General of State and Member of State Board of Examiners, *Love vs. Behr*, 47 Cal. 364; City Comptroller and agent to dispose of City Bonds, *Detroit vs. Redfield*, 19 Mich. 376; City Police Justice and Member of Commission to Revise City Ordinances, *McBride vs. Grand Rapids*, 47 Mich. 236; City Treasurer and Treasurer of School District, *Scranton School Township vs. Simpson*, 133 Pa. St. 202; City Treasurer and Treasurer of Sewer Commission, *People vs. Monroe County*, 105 N. Y.

App. Div. 1; Clerk in President's Office and Clerk of Committee of Congress, *U. S. vs. Saunders*, 120 U. S. 126.

There are cases holding to the contrary, but the great weight of authority sustains the rule stated in Ruling Case Law.

In our own state it was held in the case of *Stone vs. State of Ohio, ex rel. Enos*, 18 O. C. C. (N. S.) 246, that:

"County commissioners while serving as members of the quadrennial county boards of equalization are entitled to the compensation allowed by Section 5597, General Code, as amended 102 O. L., 279."

This case was reversed by the Supreme Court (*State ex rel. vs. Stone et al.*, 92 O. S. 363) for the reason, as stated by the court, that the provisions of Section 5597, General Code, providing compensation for county commissioners while acting as members of the quadrennial board of equalization had been repealed by implication upon the enactment of the salary law.

An employe of a board of education whose duties are to act as librarian for school libraries, and who is employed at an annual salary, is, while on his vacation, still an employe of the school board in the same capacity as when he is not on vacation and could not accept any employment and be paid therefor that was in any wise incompatible with his duties as librarian. However, inasmuch as while he is on vacation he is not required to perform any duties incident to his position, obviously no question of incompatibility could arise.

Your attention is directed to Section 7690, General Code, which gives to boards of education a wide discretion in hiring teachers and other employes; and it has been held that such boards may give teachers who are ill leaves of absence for reasonable lengths of time with pay. See Opinions, Attorney General, 1919, Vol. II, p. 1134.

The vacation idea, of course, is upon the theory that the employe is in need of a rest and an absence from service will be beneficial to both him and his employer. However, there is no general law granting vacations in case of school employes, and a board of education may or may not make a contract in which a vacation is provided for. Therefore, in the final analysis the contract in effect amounts to an agreement to work for the period specified, less the period during which the employe is to be absent on vacation, and the amount of pay which the board agrees to pay and the employe agrees to accept is undoubtedly affected by the fact that the employe is to have certain time away from his duties. It is obvious that the board of education could have entered into the contract without the vacation. It is also true that it may employ one to perform the service during the absence of the employe. Since it is only a matter of contract I see no reason why the board cannot enter into a supplemental or additional contract with the employe for the period it has no claim upon his services by virtue of the original contract.

Such being the case, and there being no statute prohibiting employes of that character from being employed in other positions, I am of the opinion that an employe of the board of education, whose duties are to act as librarian for school libraries and who is employed on an annual salary, with the understanding that he is to have one month's vacation with pay, may, during his vacation period, be legally employed by the board of education, or board of trustees of a school library and paid for services performed during that time. A separate contract of employment should be entered into in accordance with law for the services to be performed during the vacation period and the compensation fixed therefor previous to such employment.

Nothing in this opinion is to be construed as holding that a board of education or a board of trustees of a school library may not in a contract of employment, if it deems a vacation necessary to render an employe able and fit physically to perform his duties, provide that an employe be given a vacation period, which period the employe must actually use for recreational purposes and not in other employment.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2698.

APPROVAL, BONDS OF THE CITY OF BOWLING GREEN, WOOD COUNTY, OHIO—2 ISSUES—\$23,000.00.

COLUMBUS, OHIO, October 11, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2699.

APPROVAL, BONDS OF THE VILLAGE OF PARMA HEIGHTS, CUYA-HOGA COUNTY, OHIO—\$7,088.00.

COLUMBUS, OHIO, October 11, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

2700.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF HAWKINS' ALLOTMENT IN JEFFERSON TOWNSHIP, MERCER COUNTY, OHIO.

COLUMBUS, OHIO, October 11, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract of title prepared and certified by Homer J. Hinders, of Celina, Ohio, under date of October 3, 1928, and request my opinion as to the status of the title of lots Nos. 82 and 83 of Hawkins' 2nd Allotment, West of the Incorporated Village of Celina, Ohio, which said property is situate in the Township of Jefferson, County of Mercer and State of Ohio, as disclosed by said abstract.

Upon an examination of said abstract, the following objections have been noted:

1. In Section 1 the abstract shows an entry to the East Half (E.  $\frac{1}{2}$ ) of the Northwest Quarter (N. W.  $\frac{1}{4}$ ) of Section One (1), Township Six (6), Range Two (2), containing 80.82 acres, by Demas Adams. However, it is stated by the abstracter that "the state deed has never been spread upon the record in Mercer County, Ohio." It also does not appear from the abstract when said entry was made.

2. At Section 13 the lands set off to Mira Gertrude Baily in a partition proceedings in the Common Pleas Court of Mercer County, in 1875, is described as follows: