

**OPINION NO. 98-009****Syllabus:**

1. Pursuant to R.C. 3375.15, the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees are incompatible.
2. A member of the board of library trustees of a school district free public library vacates and impliedly resigns from that position when she is subsequently elected and qualified as a member of the board of education that is responsible for making appointments to the board of library trustees.

---

**To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio**

**By: Betty D. Montgomery, Attorney General, February 9, 1998**

You have requested an opinion concerning the simultaneous holding of two public positions. By way of background, you have stated that an individual who serves on the board of library trustees of a school district free public library has been elected to the board of education that is responsible for making appointments to the board of library trustees. The election of the individual to the board of education has raised the following questions:

1. Are the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees compatible?
2. If the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees are incompatible, must an individual who serves as a member of a board of library trustees resign from that position when she is elected subsequently to the board of education that is responsible for making appointments to the board of library trustees?

3. If the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees are compatible, may an individual who serves simultaneously in these two positions be reappointed to the board of library trustees when her term expires?

1979 Op. Att'y Gen. No. 79-111 established a seven question test for determining whether an individual may simultaneously hold two public positions. An individual is prohibited from serving simultaneously in two public positions if, *inter alia*, the simultaneous service is prohibited by a statute enacted by the General Assembly. See 1986 Op. Att'y Gen. No. 86-004 at 2-16; 1979 Op. Att'y Gen. No. 79-111 at 2-367 and 3-368.

R.C. 3375.15 sets forth the eligibility requirements for membership on the board of library trustees of a school district free public library. In this regard, R.C. 3375.15 provides, in part:

In any school district in which a free public library has been established, by resolution adopted by the board of education of such school district, prior to September 4, 1947, such library shall be under the control and management of a board of library trustees consisting of seven members. *No one is eligible to membership on such board of library trustees who is or has been for a year previous to his appointment a member of a board of education making such appointment.* A majority of such trustees shall be qualified electors of the school district, but a minority may be qualified electors of the county who reside outside the school district, and all shall be appointed by the board of education of the school district. (Emphasis added.)

Thus, pursuant to R.C. 3375.15, an individual who is a member of a board of education is ineligible for appointment to a board of library trustees of a school district free public library that is appointed by the board of education. See *generally* 1979 Op. Att'y Gen. No. 79-086 at 2-277 ("an appointing authority may not appoint himself to an appointive position").

With respect to your specific inquiry, you have stated that the individual in question was appointed to the board of library trustees prior to her election to the board of education that is responsible for making appointments to the board of library trustees. In other words, when the individual was appointed to the board of library trustees, the individual was not a member of the board of education that appointed her to the board of library trustees. Accordingly, at the time that the individual was appointed to the board of library trustees, R.C. 3375.15 did not render the individual ineligible for membership on the board of library trustees.

It is, however, a fundamental rule of law that a public officer must be qualified to serve throughout her entire term of office. *State ex rel. Boda v. Brown*, 157 Ohio St. 368, 105 N.E.2d 643 (1952); *State ex rel. Haff v. Pask*, 126 Ohio St. 633, 186 N.E. 809 (1933); *State ex rel. Attorney General v. Orr*, 61 Ohio St. 384, 56 N.E. 14 (1899). Resolution of your specific question, therefore, turns on whether the election of an individual who is a member of a board of library trustees to the board of education that is responsible for making appointments to the board of library trustees renders the individual ineligible for membership on the board of library trustees pursuant to R.C. 3375.15.

Boards of library trustees of school district free public libraries are created by boards of education. R.C. 3375.15. The board of education that creates a board of library trustees is responsible for making the initial appointments to the board of library trustees and filling vacancies on such board. *Id.* A board of education is responsible for adopting a resolution providing for the submission to the electorate an additional tax levy to provide an adequate

amount for the necessary requirements of the free public library, R.C. 5705.23, and for adopting an annual tax budget for the free public library, R.C. 5705.28(B). In addition, the board of education of the school district which has established a school district free public library may, upon certification from the board of library trustees, levy a tax on the property of the school district, not to exceed one and one-half mills, for the maintenance and operation of the free public library. R.C. 3375.17; *see also* R.C. 3375.42.

Because a board of education is responsible for making appointments to the board of library trustees of a school district free public library and overseeing the fiscal operation of the free public library, it has been determined that a board of library trustees is "an agency of the [school] district which appointed it." 1959 Op. Att'y Gen. No. 119, p. 59, at 61; *accord Swanton Local School Dist. Library v. Budget Comm. of Lucas County*, 55 Ohio St. 2d 41, 47, 378 N.E.2d 139, 143 (1978); *see also* 1985 Op. Att'y Gen. No. 85-017 at 2-67 ("[c]learly the board of library trustees of a city school district library is subject to the jurisdiction of the school district by which the library has been established and is controlled"). As an appointed agency of the board of education, a board of library trustees is subordinate to the board of education.

It is a long-standing principle that two public positions are incompatible when one of the positions is subordinate to, or in any way a check upon, the other. *State ex rel. Hover v. Wolven*, 175 Ohio St. 114, 191 N.E.2d 723 (1963); 1990 Op. Att'y Gen. No. 90-021 at 2-80; 1979 Op. Att'y Gen. No. 79-111 at 2-369 through 2-371. In addition, it has been determined that "all officers having appointive power are disqualified for the positions to which they may appoint." 1979 Op. Att'y Gen. No. 79-086 at 2-277; *accord* 1935 Op. Att'y Gen. No. 3865, vol. I, p. 67. Since the General Assembly enacts legislation in light of and with reference to the rules and principles of the common law and does not intend a repeal of settled rules of common law unless it clearly expresses or imports such intention, *State ex rel. Morris v. Sullivan*, 81 Ohio St. 79, 90 N.E. 146 (1909) (syllabus, paragraph three), it may be presumed that the General Assembly inserted the membership restriction in R.C. 3375.15 to ensure that no individual who serves on a board of education that is responsible for making appointments to a board of library trustees of a school district free public library shall also hold a position on the board of library trustees.

Based on the foregoing, it is our opinion that R.C. 3375.15 renders ineligible for service on the board of library trustees of a school district free public library a person who serves as a member of the board of education that is responsible for making appointments to the board of library trustees. *See generally* 1959 Op. Att'y Gen. No. 999, p. 686 (syllabus, paragraph one) ("the positions of superintendent of schools, school teacher, and of employees of a board of education, a municipal corporation or of a county, are not incompatible with the office of a member of a library board of trustees, ... provided that in case of a school district library organized prior to September 4, 1947, by resolution of a board of education of such district, such employees are also barred from service as trustees of such library board if they are or have been, for a year previous to their appointment, members of the board of education making such appointment"). Accordingly, pursuant to R.C. 3375.15, the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees are incompatible.

Your second question asks whether, if the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees are incompatible, an individual who serves as a member of a board of library trustees must resign from that position when she is elected subsequently to the board of education that is responsible for

making appointments to the board of library trustees. The rules governing the resignation of an individual from a public office when the individual accepts a second incompatible public office are delineated in 1990 Op. Att'y Gen. No. 90-083. As stated in 1990 Op. Att'y Gen. No. 90-083 at 2-359 and 2-360:

As indicated above, the individual in question was a member of the board of education of the city school district when he was elected to the position of township trustee. It is a settled rule in Ohio that "[w]here an individual accepts a second office whose duties are incompatible with those of another office already held by such individual, the first held office is thereby vacated." *State ex rel. Hover v. Wolven*, 175 Ohio St. 114, 191 N.E.2d 723 (1963) (syllabus, paragraph three); accord *State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 707-08, 76 N.E.2d 886, 890 (1947); *State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 346, 40 Ohio Law Rep. 285, 291 (Ct. App. Butler County 1934); 1960 Ohio Att'y Gen. No. 1086, p. 5 at 7-9. There is, however, one well recognized exception to this general rule. Where an individual holding an office is statutorily prohibited from holding another named office, the election or appointment to the second office is a nullity and the individual retains title to the first office. See *State ex rel. Gettles v. Gillen*, 112 Ohio St. 534, 148 N.E. 86 (1925) (syllabus); *State ex rel. Attorney General v. Craig*, 69 Ohio St. 236, 69 N.E. 228 (1903) (syllabus, paragraph one); *State ex rel. v. Kearns*, 47 Ohio St. 566, 25 N.E. 1027 (1890) (syllabus, paragraph five); 1960 Op. No. 1086 at 7-9.

I note that no statute expressly prohibits a member of the board of education of a city school district from holding the position of township trustee. The subsequent election of a member of the board of education of a city school district to the position of township trustee, thus, is not rendered invalid. As a consequence, the election and qualification of a member of the board of education of a city school district to the incompatible position of trustee of a township located within the school district, is a vacation of the position of member of the board of education and "amounts to an implied resignation or abandonment of the same." *State ex rel. Witten v. Ferguson*, 148 Ohio St. at 707-08, 76 N.E.2d at 890; see *State ex rel. Hover v. Wolven*; *State ex rel. Baden v. Gibbons*; 1960 Op. No. 1086. See generally *State ex rel. Orr v. Board of Educ. of the City of Cleveland Dist.*, 23 Ohio C.C. (n.s.) 98, 101, 34 Ohio C.C. Dec. 140, 143 (Cir. Ct. Cuyahoga County 1912) ("[t]he authorities are uniform to the effect that, in the absence of statutory requirement, no particular form of resignation is necessary"), *aff'd mem.*, 87 Ohio St. 528, 102 N.E. 1133 (1913).

It is, thus, readily apparent from the foregoing that the individual in question is deemed to have impliedly resigned from the position of member of the board of the city school district and is, therefore, legally authorized to hold the position of township trustee. (Citations and footnote omitted.)

Neither R.C. 3375.15 nor any other statute prohibits a member of a board of library trustees from serving as a member of the board of education that is responsible for making appointments to the board of library trustees. Rather, R.C. 3375.15 renders a member of a board of education ineligible for membership to a board of library trustees that is appointed by the board of education. Consequently, the appointment of a member of the board of education to a board of library trustees that is appointed by the board of education is a nullity. *State ex rel. Attorney General v. Craig*, 69 Ohio St. 236, 69 N.E. 228 (1903) (syllabus, paragraph one); *State ex rel. v. Kearns*, 47 Ohio St. 566, 25 N.E. 1027 (1890) (syllabus, paragraph five); 1960 Op. Att'y Gen. No. 1086, p. 5. The election of a member of a board of

library trustees to the position of member of the board of education is not invalid under R.C. 3375.15, however. See 1990 Op. Att'y Gen. No. 90-083; 1960 Op. Att'y Gen. No. 1086, p. 5 at 6-7.

The election of an individual who serves as a member of the board of library trustees to the incompatible position of member of the board of education that is responsible for making appointments to the board of library trustees thus results in the abandonment of the position of member of the board of library trustees. See *State ex rel. Hover v. Wolven* (syllabus, paragraph three); *State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 707-08, 76 N.E.2d 886, 890 (1947); *State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 346 (Ct. App. Butler County 1934); 1960 Ohio Att'y Gen. No. 1086, p. 5, at 7-9. Therefore, a member of the board of library trustees of a school district free public library vacates and impliedly resigns from the board of library trustees when she is subsequently elected and qualified as a member of the board of education that is responsible for making appointments to the board of library trustees.

Your final question asks whether, if the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees are compatible, an individual who serves simultaneously in these two positions may be reappointed to the board of library trustees when her term expires. Because the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees are incompatible, it is unnecessary to answer your final question.

In light of the foregoing, it is my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 3375.15, the positions of member of the board of library trustees of a school district free public library and member of the board of education that is responsible for making appointments to the board of library trustees are incompatible.
2. A member of the board of library trustees of a school district free public library vacates and impliedly resigns from that position when she is subsequently elected and qualified as a member of the board of education that is responsible for making appointments to the board of library trustees.