

at a time to be fixed by the agent of the petitioners. Unless such special election is held, the first election of officers for such corporation shall be at the first municipal election after its creation."

The absence of any special provision as to notice of the special election authorized in the foregoing section, compels a reference to the general provisions contained in the election laws. Section 4785-5, General Code, is in my opinion, therefore, controlling. It provides:

"At least ten days before the time for holding an election the board shall give public notice by a proclamation, posted in a conspicuous place in the court house and city hall; or by one insertion in a newspaper published in the county; and if no newspaper is published in such county, then in a newspaper of general circulation therein. Such newspaper notice shall not exceed six inches in length of double column width."

Specifically answering your question, it is my opinion that notice of a special election of officers in a newly incorporated municipality should be published as provided in Section 4785-5, General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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3462.

OFFICES INCOMPATIBLE—DIRECTOR OF EDUCATION, ASSISTANT DIRECTOR AND CHIEFS OF DIVISIONS WITHIN STATE EDUCATION DEPARTMENT MAY NOT TEACH SIMULTANEOUSLY AT A UNIVERSITY—WHEN EMPLOYEES OF EDUCATION DEPARTMENT MAY TEACH.

**SYLLABUS:**

*The director of education, the assistant director of education and the chiefs of divisions within the Department of Education are not permitted by law to be employed as teachers at the Ohio State University or any college, or hold any other office or position of employment while serving as such director, assistant or chief of a division within the Department of Education. All other employes within said Department of Education may legally be employed as teachers at the Ohio State University or any other college, providing their schedule be so arranged, with the approval of the head of the Department of Education, that they render at least eight hours service per day as an employe of the Department of Education.*

COLUMBUS, OHIO, July 29, 1931.

DR. GEORGE W. RIGHTMIRE, *President, The Ohio State University, Columbus, Ohio.*

MY DEAR DR. RIGHTMIRE:—This will acknowledge receipt of your request for my opinion with reference to the following:

"Two persons regularly employed in the State Department of Education have been teaching in the summer school at this University and have

finished their service for the summer, rendered under the usual contract entered into with them some months ago. This morning the Business Manager of the University took the list of names of persons to whom salaries are due today for summer school work, the list containing these two names of persons who have double employment, to the Budget Commissioner who approved the list. He then took it to the Auditor's Office and Mr. Tracy stated that it would be in his judgment illegal to pay the salary now due from the University under these conditions. The question is, can the University now make a payment to these two persons who are in the employ on regular salary of the State Department of Education and are for the summer session rendering a service to two divisions of the State's activities, and, therefore, claiming salary in both."

I know of no general rule of law in force in this State which prevents a person from holding two public positions and drawing pay for services rendered in both positions, providing the positions are not incompatible because of conflict of duties and it is physically possible for him to perform his full duty in compliance with law in each position. That is to say, the fact that he is paid compensation for two positions is not in and of itself, and for that reason alone, illegal.

In other words, unless the law either specifically forbids the simultaneous holding of two or more positions by the same person, or unless the several positions involve a conflict of duties or interests, or their duties are such that the full performance of all of them would be physically impossible, I am of the opinion that their being held by one and the same person is not contrary to law.

A number of statutes have been enacted, from time to time, specifically inhibiting the simultaneous holding of certain public positions by the same person. For instance, Section 11 of the General Code, which provides that no person shall hold, at the same time more than one of the following offices: Sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, probate judge or justice of the peace. To a similar effect are sections 2565, 2783, 2910 and 4207, General Code, and many other sections of the Code that might be mentioned. In the Constitution of Ohio, Article II, Section 4, provision is made whereby members of the General Assembly are precluded from holding any lucrative position under the authority of this state, with certain exceptions, and in Article III, Section 14 of said instrument, it is provided that no member of Congress or other person holding office under the authority of this state or of the United States, shall execute the office of Governor, except as provided therein. The mere enactment of provisions of law such as the above is a clear recognition of the fact that without them the duplication of offices thereby prohibited might lawfully exist.

There is nothing inherently incompatible in being an employe of the State Department of Education and teaching at the Ohio State University, so far as conflict of duties or interests is concerned. It becomes necessary, therefore, to examine the statutes with reference to the organization of the Department of Education and those relating to the duties of the officers and employes in the Department to determine whether or not such dual employment is expressly prohibited or whether the duties of the two positions are such that it is not physically possible to fill both positions.

The Ohio State Department of Education is one of the several departments of state administration, established by what is known as the Administrative Code. Sections 154-1 et seq. of the General Code of Ohio.

Section 154-3, General Code, which specifically creates the several administra-

tive departments of state government provides with reference to the Department of Education as follows:

"The following administrative departments are created:

\* \* \* \* \*

The department of education, which shall be administered by the superintendent of public instruction, as director thereof;"

The Superintendent of Public Instruction is an officer provided for by the Constitution of Ohio. Since the enactment of the administrative code, the person appointed as Superintendent of Public Instruction in the manner provided for by the Constitution automatically becomes the head of the Department of Education and is known as the Director of Education.

So far as the Director of Education himself is concerned, I am of the opinion that his right to teach at the Ohio State University while holding the position of Director of Education is clearly negated by the terms of section 354, General Code, which provides with reference thereto, as follows:

"The superintendent of public instruction while holding such office shall not perform the duties of teacher or superintendent of a public or private school, or be employed as teacher in a college or hold any other office or position of employment. \* \*"

As to the other employes of the Department of Education the statutes are not so clear and specific with reference to this matter. Sections 154-5, 154-6, 154-8 and 154-16 provide in part as follows:

"154-5. In each department there shall be an assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in Section 154-6 of the General Code, or as the head of one of the divisions created within such department as authorized by section 154-8 of the General Code. \* \*"

"154-6. Offices are created within the several departments as follows:

In the Department of Education Chiefs of divisions as follows:

Examination and licensing

Film censorship

\* \* \* \* \*

"154-8. \* \*

With the approval of the governor, the director of each department shall establish divisions within his department, and distribute the work of the department among such divisions. Each officer created by section 154-6 of the General Code shall be the head of such a division. \* \* \* \*"

"154-16. Each officer whose office is created by sections 154-3, 154-5 and 154-6 of the General Code shall devote his entire time to the duties of his office, and shall hold no other office or position of profit. \* \* \* \*"

The statutes quoted above, in my opinion, prevent the assistant director of education and the heads of divisions in the Department of Education from teaching at the Ohio State University for pay, as such teaching would clearly constitute the holding of a position for profit.

The time which the other employes of the Department of Education are re-

quired to devote to the duties of their offices is fixed by Section 154-20, General Code, which reads in part, as follows:

"All employes in the several departments shall render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excepted in cases in which, in the judgment of the director, the public service will not thereby be impaired.

\* \* \* \*"

The above statute, it will be observed, requires the employes spoken of to render eight hours service per day.

If, with the consent of the head of the department, an employe's time is arranged so that he can render eight hours service in the Department of Education and at the same time teach at the university, I am of the opinion that the law is not violated, and that he is entitled to pay for services rendered in both positions.

In am therefore of the opinion, in specific answer to your question, that the director of education, the assistant director of education and the chiefs of divisions within the Department of Education are not permitted by law to be employed as teacher at the Ohio State University or any college, or hold any other office or position of employment while serving as such director, assistant or chief of a division within the Department of Education. All other employes within said Department of Education may legally be employed as teacher at the Ohio State University or any other college, providing their schedule be so arranged, with the approval of the head of the Department of Education, that they render at least eight hours service as an employe of the Department of Education.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3463.

APPROVAL, BONDS OF NORTH COLLEGE HILL VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, July 29, 1931.

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

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3464.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR — A. P. LAGRON.

COLUMBUS, OHIO, July 29, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000 upon which