

2895.

APPROVAL, BONDS OF NORWICH TOWNSHIP RURAL SCHOOL DISTRICT,
FRANKLIN COUNTY, OHIO—\$85,000.00.

COLUMBUS, OHIO, January 31, 1931.

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

2896.

OFFICES COMPATIBLE—TOWNSHIP TRUSTEE AND COUNTY BOARD
OF EDUCATION MEMBER.

SYLLABUS:

An elector in a township may hold the position of township trustee and member of a county board of education at one and the same time.

COLUMBUS, OHIO, February 2, 1931.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“I would respectfully request your opinion as to whether or not an elector in a township can hold the position of Township Trustee and member of County Board of Education at the same time.”

There are no statutory inhibitions upon one and the same person holding the office of township trustee and member of a county board of education. It remains to be determined, therefore, whether or not the two offices are incompatible at common law. That is, whether or not one is subordinate to, or in any way a check upon the other. *State ex rel v. Gebert*, 12 O. C. C., N. S., 274.

Upon examination of the statutes setting forth the duties of members of a county board of education and those of a township trustee, I do not find that the two positions are in any wise a check upon each other or that one is in any respect subordinate to the other. Their duties lie in two different fields, and can not by any possibility, in my opinion at any time become adversary.

It has been held in previous opinions of this office, and I think correctly so, that the office of township trustee and member of a rural or village board of education in the same county are incompatible. See Annual Report of the Attorney General for 1910-1911, page 909; Opinions of the Attorney General for 1927, page 5. The reason for this holding is that village or rural boards of education and boards of township trustees are each a body politic and corporate, having like powers and duties with respect to the property under their jurisdiction and with respect to their allegiance to their constituents. It is conceivable that disputes might arise as to property rights or as to the disposition of public moneys between the school district and the township which would result in the two boards being placed in the position of adversaries. This would be most likely to occur when, in the preparation of annual budgets by the county budget commission, it becomes necessary to pare down the requests made by the different

taxing subdivisions and for the budget commission to call in the members of the several taxing boards in the county for conferences. When a board of township trustees and a board of education holding interlocking membership appear before the budget commission to urge the claims of their respective taxing subdivisions they clearly would appear as adversaries against themselves. No such reason, however, could be urged against the compatibility of membership on a county board of education and a township board of trustees for the reason that the county board of education is not a tax levying body and does not receive funds for its purpose from the budget commission but from moneys retained and set aside for that purpose by the county auditor.

I am therefore of the opinion, in specific answer to your question, that an elector in a township may hold the position of township trustee and member of a county board of education at one and the same time.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2897.

OFFICES COMPATIBLE—COUNTY RECORDER AND TOWNSHIP CLERK.

SYLLABUS:

The offices of county recorder and township clerk are compatible and may be held by one and the same person, if it is physically possible for one person to perform the duties of both offices.

COLUMBUS, OHIO, February 2, 1931.

HON. J. D. SEARS, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—Your recent inquiry reads as follows:

“Kindly give me your opinion as to whether the position of County Recorder and Township Clerk are compatible?”

I see no reason either statutory or otherwise why these two positions should not be compatible, but I would prefer having an opinion from your office in the matter.”

A township clerk is an elective township officer by virtue of Section 3299, General Code, while a county recorder is an elective county officer under the provisions of section 2750, General Code.

After a careful search of the Ohio Constitution and Ohio General Code, I am unable to find any provision that prevents a person from holding these two offices at the same time.

Therefore, since there is no provision in the Constitution of Ohio or statutes making these offices incompatible, it only remains to be determined whether said offices are incompatible under the test of the common law.

The common law rule is concisely set forth in the often cited case of *State ex rel. v. Gebert*, 12 C. C. (N. S.) 274, at page 275, as follows:

“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.”