

Note from the Attorney General's Office:

1961 Op. Att'y Gen. No. 2480, p. 532 was followed by 2022 Op. Att'y Gen. No. 2022-007.

2480

OFFICE OF TOWNSHIP CLERK NOT INCOMPATIBLE WITH
OFFICE OF MEMBER OF BOARD OF EDUCATION FOR
SCHOOL DISTRICT IN WHICH TOWNSHIP IS LOCATED—
§507.01, R.C.

SYLLABUS:

The office of township clerk, created by Section 507.01, Revised Code, is not incompatible with the office of member of the board of education for the local school district in which the township is located; and one person may serve in both capacities.

Columbus, Ohio, August 25, 1961

Hon. Lynn B. Griffith, Jr., Prosecuting Attorney
Trumbull County, Warren, Ohio

Dear Sir :

I have your request for my opinion which asks :

“Is it legal and compatible for the same person to be a member of the local township school board and township clerk, at the same time and within the same township?”

Under Section 3313.13, Revised Code, prosecuting attorneys or other officials acting in a similar capacity are barred from serving as members of a board of education, this for the obvious reason that they are by statute designated as advisors to boards of education. As regards a township clerk, there is no similar statutory limitation.

The common law test of compatibility as regards public offices is described in *State ex rel., Attorney General v. Gebert*, 12 C. C. (N.S.) 274, at page 275, as follows :

“Offices are 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.”

In Opinion No. 4885, Opinions of the Attorney General for 1932, page 1528, it is stated at page 1532 :

“In the Annual Report of the Attorney General for 1911 and 1912, volume II, page 1204, it is held in the syllabus :

“‘As there are no conflicting duties, the clerk of a township may serve as a member of the township board of education.’

“It is true that Section 4747, General Code, one of the sections mentioned in said opinion, has since been amended and township boards of education no longer exist, however, the amendment of said section is immaterial, and township boards of education are superseded to a certain extent by boards of education of rural school districts. Hence, I feel that there being no conflicting duties, the clerk of a township may serve as a member of a rural board of education.”

I note that Opinion No. 4885, *supra*, is mainly predicated on a prior opinion of the Attorney General, rendered before the enactment of the Budget Law.

Since 1927, when the Budget Law went into effect, it often happens that officers of different political subdivisions of the state find themselves on opposite sides in the contest for a share of the tax dollar and that, thus, incompatibility not apparent at first blush, is discovered where there was none before. Pursuing the instant question in such light, I find that under Section 5705.01 (C), Revised Code, the taxing authority of a school district is the board of education, and that of a township, the board of township trustees. Under Section 5705.28, Revised Code, the taxing authorities of the respective subdivisions are charged with the duty of preparing their tax budgets for the next succeeding fiscal year by a certain date of the previous year. A member of a local board of education is thus required to help in the preparation of the tax budget of his school district. A township clerk, being an officer of the township, elected independently of township trustees, is not charged specifically with such duty as regards the township tax budget. However, under Section 5705.01 (D), Revised Code, the township clerk is designated as the fiscal officer of the township.

Should I assume that the report of the clerk to the board of township trustees, as the fiscal officer of the township, in connection with the preparation of the tax budget is to be viewed as an act of a ministerial nature, which I think is a fair and safe assumption, the further question arises, whether or not the township clerk, as the fiscal officer of the township, could avoid appearing before the county budget commission, as provided in Section 5705.32, Revised Code, to defend the township tax budget, before the final determination by the commission is made. I do not believe he could avoid such appearance, in case the township trustees asked him so to do. This being clear, it might appear that his appearance before the budget commission could be directed against the budget requests of other, competing subdivisions, among them the budget request of the board of education of the local school district.

However, an examination of specific statutes dealing with taxes which provide revenue for a local school district indicates that such revenue clearly is fixed by such statutes. See Sections 5707.03, 5707.05, 5725.24, and 5739.20, Revised Code. Accordingly, the possibility of conflict between

a board of township trustees and a local school district embracing the same territory in connection with the distribution of taxes is credited non-existent. In this respect I note that under Section 5731.53, Revised Code, fifty per cent of the gross amount of inheritance taxes is credited for the use of the municipal corporation or township in which the tax originated, and that in case such tax originated in a township the board of township trustees may have, by resolution, such amount credited to either the general revenue fund of the township or to the board of education of the school district of which the township is a part. It is clear that in such a situation a person who was at the same time the township clerk and also a member of the board of education embracing the area of the township, would not be placed in a position of conflict as to which of the two political subdivisions he should favor, in view of the fact that as township clerk he would be without voice in the matter.

As to physical possibility, this is ordinarily a question of fact. Since both positions here considered are of a part-time nature, however, I am of the opinion that one person could serve in both capacities.

I am thus led to the conclusion that the law as stated by my predecessors in Opinions of the Attorney General for 1911 and 1912, Volume II, page 1204, and in Opinion No. 4885, *supra*, relative to the position here considered, is still valid.

In answer to your specific questions it is my opinion and you are advised that the office of township clerk, created by Section 507.01, Revised Code, is not incompatible with the office of member of the board of education for the local school district in which the township is located; and one person may serve in both capacities.

Respectfully,
MARK McELROY
Attorney General