

In an opinion to be found in Opinions of the Attorney General for 1913, Vol. II, page 1600, it was held as disclosed by the syllabus:

“A person employed as a lineman on the electric light and water works plant, and while holding this position is elected a member of the board of trustees of public affairs, and inasmuch as the board of public affairs employs, fixes the wages of and pays the linemen, the same party should not occupy both positions.”

In an opinion to be found in Opinions of the Attorney General for 1917, Vol. II, page 1876, the following appears at page 1878:

“An examination of our statutes will disclose the fact that in a number of instances the legislature has given its express consent to the appointment or election of a member of a board as its secretary or clerk, and it would seem that, inasmuch as they have done this, they meant to withhold such consent in all other cases.

For this reason, and on the authority of the position taken by this department in the past, as above outlined, I would advise you that the offices of member of the board of trustees of public affairs of a village and the clerk of the board of trustees of public affairs are incompatible.”

The above stated principles were followed in Opinions of the Attorney General for 1920, Vol. I, page 163; Opinions of the Attorney General for 1930, Vol. II, page 917.

It is significant to note that the legislature has, in certain instances, permitted persons serving on a board to be appointed to a position under such board, thus showing the necessity of such legislative authority. See sections 4747, and 6828-9, General Code; Amended Senate Bill No. 129, enacted at the recent session of the legislature.

In view of the above authorities, it is my opinion, in specific answer to your inquiry, that a member of the soldiers' relief commission may not be employed as an investigator under the provisions of section 2933-1, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1757.

SECRETARY OF BOARD OF BARBER EXAMINERS MUST BE MEMBER OF BOARD—ENTITLED TO ANNUAL SALARY AS SECRETARY IN ADDITION TO PER DIEM COMPENSATION AS MEMBER.

SYLLABUS:

Under the provisions of Amended Senate Bill No. 129 of the 90th General Assembly, the Secretary of the Board of Barber Examiners must be a member of such Board and is entitled to his annual salary as secretary in addition to his per diem compensation as member, as provided in section 4 of this act.

COLUMBUS, OHIO, October 23, 1933.

HON. GEORGE WHITE, *Governor of Ohio, Columbus, Ohio.*

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

"Amended Senate Bill 129, passed by the General Assembly in June, 1933, among other things, provides as follows:

'Section 2. The Board shall organize by electing a President and a Secretary from its members, who shall hold their respective offices for one year * * * *

Section 4. Each member of the board shall receive eight dollars for each day actually employed in the discharge of his official duties and his necessary expenses incurred therein. The secretary shall receive an annual salary of not to exceed \$2700.00 to be fixed by the board, and his necessary expenses incurred in the discharge of his official duties.'

The members of the Board have organized by selecting one of their members as President, and one of their members as Secretary.

It would seem that the member selected as Secretary should receive no compensation other than the compensation that may be fixed for him in the capacity of Secretary, and that there should be no compensation to him under the per diem provision. The present Secretary has indicated his willingness to serve in that capacity and waive any claim to the per diem compensation as a member, receiving only the compensation provided for in his official capacity as Secretary.

Your opinion is respectfully requested on two propositions:

Could a member of the Board, acting as Secretary, legally receive compensation in both capacities?

Is a member of the Board eligible to act as Secretary?"

The pertinent parts of Amended Senate Bill No. 129, passed by the recent session of the legislature, regulating the business of barbering in so far as they refer to the questions you propound, are set forth in your letter. The legislature by section 4 of the act made the holding of the positions of member of the barbering board and secretary of such board compatible. In other words, there is no legal objection to one and the same persons holding both positions.

Your first question pertains to the legal right of one person to receive the per diem compensation as a member of the board and the salary as secretary of such board. Throop on Public Officers at page 430 has the following to say in this connection:

"The compensation belongs to the officer, as an incident of his office, and he is entitled to it, not by force of any contract, but because the law attaches it to the office."

The general rule applicable to situations of this kind is stated in 22 R. C. L. 535 as follows:

"In the absence of express or implied statutory provisions 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 the eyes of the law the same individual is two distinct officers and for this reason entitled to the compensation incident to each office."

It has been uniformly held that a person occupying two compatible offices may receive the compensation attached to each office. *United States vs. Saunders*, 120 U. S. 126.

This office has, in former opinions, followed the above stated principles. In the Annual Report of the Attorney General for 1911-1912, Vol. II, page 1089, it was held as disclosed by the first branch of the syllabus:

“Contrary to the general rule of policy that a member of a board may not hold a salaried position under such board, special provision of statute makes it possible for a member of a board of education to serve as its clerk and receive the salary for both positions.”

In the opinion at page 1090, the following is stated:

“* * * There is a principle of public policy which prohibits a member of an administrative board from holding a salaried position thereunder. This principle, however, is expressly waived, so to speak, by section 4747, above quoted. The authority to prescribe compensation for the clerk is clearly vested in the board by section 4781, General Code, * * *.”

Reading all of these sections together I am of the opinion that the clerk of a township school district, who is also a member of the board of education, is entitled to the compensation prescribed by the statute as a member of the board of education, and in addition to the compensation prescribed by the board as clerk.”

The above opinion was followed in an opinion to be found in the Annual Report of the Attorney General for 1912, Vol. II, page 1776. In an opinion to be found in Opinions of the Attorney General for 1930, Vol. II, page 917, an analogous question to the one presented in your inquiry was passed upon by my immediate predecessor. The first branch of the syllabus of that opinion is as follows:

“1. A member of the board of directors of a conservancy district, who is serving as secretary and treasurer of such district, may receive compensation for such services in addition to that provided by law for his services as director.”

It is significant to note that section 6828-58, General Code, provides in so far as is pertinent as follows:

“Each member of the board of directors shall receive five dollars a day and his necessary expenses for the time actually employed in performing his duties. * * *”

Section 6828-9, General Code, provides that the board of directors of a conservancy district shall elect some suitable person as secretary, who may, or may not be a member of the board. Section 6828-11, General Code, provides that the secretary shall serve also as treasurer of the district, unless a treasurer is otherwise provided for by the board, and this section further provides that employment of the secretary and treasurer for the district shall be evidenced by an agreement in writing, which, so far as possible, shall specify the amount to be paid for his services. It is obvious that the present question is analogous to the one which my immediate predecessor was called to pass upon. In an opinion to be found in the Annual Report of the Attorney General for 1907-1908, page 218, it was held as disclosed by the second branch of the syllabus:

"Secretary of state dental board entitled to per diem fee as member of board, in addition to salary as secretary."

In the opinion at page 219, the following appears:

"You inquire, also, whether, under section 5 of the dental law, the secretary of the state dental board is entitled to receive compensation as a member, in addition to such salary as may be fixed by the board for him as secretary. The secretary is required by section 3 to be a member of the board. While the question is not free from doubt, I am of the opinion that the secretary is entitled to compensation as a member of the board, in addition to salary as the secretary."

As to the policy of permitting one person to serve as secretary and as a member of the Board of Barber Examiners, I express no opinion since the legislature has in plain terms permitted this, and it follows that he is entitled to compensation for both positions. However, it might be said that the secretary is paid on an annual basis and the amount he is to receive may be fixed with the view that he is also to receive his per diem compensation as member of the board. No opinion is expressed upon the policy of allowing the secretary to receive compensation from both positions, this being a matter which has been determined by the legislature.

In reference to your second question, it is apparent that a member of the Board of Barber Examiners is eligible to serve as secretary of such board. Not only is a member eligible to serve as secretary, but, under the clear language of the act, a member of the board is the only one eligible to serve as secretary. Section 2 of the act reads in part as follows:

*"The board shall organize by electing a president and a secretary from its members, who shall hold their respective offices for one year. * * *"*
(Italics the writer's.)

It is therefore my opinion, in specific answer to your inquiries, that, under the provisions of Amended Senate Bill No. 129 of the 90th General Assembly, the Secretary of the Board of Barber Examiners must be a member of such Board and is entitled to his annual salary as secretary in addition to his per diem compensation as member, as provided in section 4 of the act.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1758.

APPROVAL, LEASE TO LANDS IN ELK RUN TOWNSHIP, COLUMBIANA COUNTY, OHIO, FOR THE RIGHT TO MINE AND TAKE COAL.

COLUMBUS, OHIO, October 23, 1933.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a certain lease in duplicate executed by you under the authority of section 3209-1, General Code, to one Frank A. Sweeney. By the lease instrument here in question, there is leased and demised