

2843

A VILLAGE SOLICITOR IS NOT INCOMPATIBLE WITH A MEMBER OF THE LOCAL OR EXEMPTED VILLAGE BOARD OF EDUCATION—§§3311.04, 733.48 R.C., CHAPTER 3313. R.C.

SYLLABUS:

The position of village solicitor created pursuant to Section 733.48, Revised Code, is not incompatible with the position of member of the local or exempted village board of education (Section 3311.03 or Section 3311.04, Revised Code) located in the village.

Columbus, Ohio, February 28, 1962

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

Dear Sir:

Your request for my opinion reads as follows:

“I respectfully request your opinion on the following question:

“Are the positions of member of a Village Board of Education and Village Solicitor compatible?”

While your request refers to a village board of education, I assume that you are referring to either a local board of education as defined in Section 3311.03, Revised Code, or an exempted village board of education as defined in Section 3311.04, Revised Code.

A board of education is a political subdivision separate and apart from all other political entities (Section 3313.17, Revised Code). Thus, the board of education in question, whether local or exempted village, is not connected with the village in which said board is located.

On reviewing the statutes pertaining to school districts and boards of education (Chapters 3311. and 3313., Revised Code), I have found no prohibition against a member of a local or exempted village board of education serving as solicitor of the village in which the board is located. Nor does the statute pertaining to village solicitor (Section 733.48, Revised Code) preclude a person serving in that capacity from also serving as a member of the local or exempted village board of education located in the village. Absent any specific statutory prohibition, it remains to be determined whether the positions in question are incompatible under the common-law rule of incompatibility as stated in *State, ex rel. Attorney General v. Gebert*, 12 C.C. (N.S.), 274, at page 275:

“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.”

Section 733.48, Revised Code, pertaining to a village solicitor, reads:

“When it deems it necessary, the legislative authority of a village may provide legal counsel for the village, or for any department or official thereof, for a period not to exceed two years, and provide compensation for such counsel.”

Chapter 3313., Revised Code, deals with the powers and duties of education, such powers and duties being limited to the regulation and operation of the public schools of the district. As noted earlier, the school district is separate and apart from the village.

On reviewing the statutes pertaining to the two positions here involved, I have been unable to find any reason to conclude that either is subordinate to, or in any way a check upon, the other. Also, while the question of physical possibility is a question of fact, since each of the positions here concerned are of a part-time nature, it would appear that one person could perform the duties of both.

Accordingly, it is my opinion and you are advised that the position of village solicitor created pursuant to Section 733.48, Revised Code, is not

incompatible with the position of member of the local or exempted village board of education (Section 3311.03 or Section 3311.04, Revised Code) located in the village.

Respectfully,

MARK McELROY

Attorney General