

OPINION NO. 71-081

Syllabus:

An individual who teaches in a vocational school district which comprises more than one county, may file for election to the county school board of one of those counties, although he could not be appointed as that county's representative on the board of education of the joint vocational school district.

To: James D. Ruppert, Warren County Pros. Atty., Lebanon, Ohio
By: William J. Brown, Attorney General, November 29, 1971

Your request for my opinion reads as follows:

"May an individual who teaches in the Hamilton County Vocational School District, and who resides in Warren County, file for election to the Warren County School Board, when the County School Board participates in the Vocational School District?"

Statutes concerning boards of education are contained in Chapter 3313, Revised Code. Section 3313.01, Revised Code, which states the qualifications of members of county boards of education, reads as follows:

"In county, local, and exempted village school districts, the board of education shall consist of five members who shall be electors residing in the territory composing the respective districts and shall be elected at large in their respective districts."

Statutory provisions prohibiting certain persons from being members of boards of education are stated in Sections 3313.13 and 3313.70, Revised Code. Section 3313.13, supra, reads as follows:

"No prosecuting attorney, city solicitor, or other official acting in a similar capacity shall be a member of a board of education."

Section 3313.70, supra, states as follows:

"No member of the board of education in

any district shall be eligible to the appointment of school physician, school dentist, or school nurse during the period for which he is elected."

Since the individual in your request meets the statutory qualifications and does not fall within the statutory prohibitions, the common law rule will apply. This rule is set forth in State ex rel. Attorney General 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."

Since it would not appear to be physically impossible for one person to discharge the duties of both teacher in a vocational school district and member of a county board of education, such positions must be compatible unless one is subordinate to, or a check upon, the other. Section 3311.19, Revised Code, which provides for the management and control of a joint vocational school district, is helpful in making this determination. That Section reads as follows:

"The management and control of a joint vocational school district shall be vested in the joint vocational school district board of education.

"Where a joint vocational school district is composed only of two or more local school districts located in one county, or when all the participating districts are in one county and the boards of such participating districts so choose, the county board of education of the county in which the joint vocational school district is located shall serve as the joint vocational school district board of education. Where a joint vocational school district is composed of local school districts of more than one county, or of any combination of county, local, city, or exempted village school districts, unless administration by the county board of education has been chosen by all the participating districts in one county pursuant to this section, then the board of education of the joint vocational school district shall be composed of one or more persons who are members of the boards of education from each of the city, exempted village, or county school districts affected to be appointed by the boards of education of such school districts.
* * *

Since in this case all the districts participating in the vocational school district are obviously not from a single county, the county board of education could have no possible direct control over the vocational school district. Thus, the position of member of a county board of education would be neither subordinate to, nor a check upon, the position of a teacher in a vocational school district, under the facts presented here. The only possible conflict would arise if such individual were appointed by the county board of education, pursuant to Section 3311.19, supra, to serve on the

board of education of the joint vocational school district. However, it would appear that such an appointment could be challenged at that time, and that this possibility should not prevent such an individual from serving on the county board of education.

It may be argued that, if the teacher becomes a member of the county board, he may be in a position to exert some indirect control over the vocational school board since he will have a vote in naming his county's representative on the vocational school board. It seems quite clear, however, from those parts of Section 3311.19, supra, which follow the passages quoted, that the county board and the vocational school board are completely independent entities; that the county board has no power to remove its representative until he has completed his term; and that the vocational school board has the same powers, within its own proper jurisdiction, as the county board exercises over the county school system. Under these circumstances I think the suggested conflict is too remote and speculative to be given any weight.

In specific answer to your question it is my opinion, and you are so advised, that an individual who teaches in a vocational school district which comprises more than one county, may file for election to the county school board of one of those counties, although he could not be appointed as that county's representative on the board of education of the joint vocational school district.