

Note from the Attorney General's Office:

1973 Op. Att'y Gen. No. 73-108 was modified by
1989 Op. Att'y Gen. No. 89-069.

OPINION NO. 73-108

Syllabus:

The positions of teacher in a local school district and member of the board of education of another local school district within the same county school district are compatible and may be held by one person at the same time. (Opinion No. 1063, Opinions of the Attorney General for 1959, disapproved.)

To: Donald L. Jones, Washington County Pros. Atty., Marietta, Ohio
By: William J. Brown, Attorney General, November 7, 1973

Your request for my opinion reads as follows:

The Fort Frye Local Board of Education has requested me to obtain your opinion as to the following question: Whether the position of teacher in its District is compatible with the position of member of the Frontier Local Board of Education, both such local Boards of Education being in the same County School System?

Your letter also calls my attention to Opinion No. 1063, Opinions of the Attorney General for 1959, which is directly on point. The syllabus of that Opinion reads as follows:

Pursuant to the provisions of Sections 3311.08 and 3319.07, Revised Code, the position of teacher in a local school district and the position of member of a board of education in another local school district, both such districts being within the same county school district, are incompatible and may not be held by one person at the same time.

Furthermore, your letter notes two unreported Common Pleas Court decisions which reached a conclusion opposite to that of my predecessor in Opinion No. 1063, supra: Gerding v. Board of Educ., Case No. 733,928 (Cuyahoga County), and Kellogg v. Board of Educ., Case No. 80608 (Trumbull County). In view of these two decisions, a reconsideration of my predecessor's conclusion is timely.

Because there is no statutory provision which expressly prohibits a person from holding both positions in question simultaneously, it is necessary to consider them in light of the common law rule of incompatibility. This rule is stated in State ex rel Attorney General v. Gebert, 12 Ohio C.C.R. (n.s.) 274, 275 (1909), 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.

This rule was, of course, applied by my predecessor in Opinion No. 1063, supra. He noted at 746 that a local school district "lacks the degree of independence enjoyed by other school districts and * * * is in fact, subservient to the authority of the board of a county school district." Among the reasons for this conclusion are the fact that the superintendent of the county board acts as superintendent of all local schools within the county district. R.C. 3319.01. He has the power to direct and assign teachers within the schools under his supervision, and to nominate teachers for employment. R.C. 3319.07. A local board cannot employ a teacher not so nominated except by majority vote of its full membership after considering two persons nominated by the superintendent.

A local school district board of education may now employ an executive head, styled a local superintendent (R.C. 3319.02, 131 Ohio Laws 800 (1965)), but the superintendent of the county board of education retains the powers previously discussed.

After quoting R.C. 3319.07, my predecessor stated at 747 the reasons for his conclusion, as follows:

It is quite clear that the provisions of this section are likely to have the person here under consideration under pressure from two directions. A situation can conceivably arise in which such person may wish in the exercise of his best judgment, to vote as a member of the board in local school district "B" for the re-employment of a teacher or principal who has not been nominated by the county school superintendent, but such person may think twice before so doing, in the belief, whether well founded or not, that he may thereby incur the displeasure or worse, of his superior the county superintendent, as teacher in local school district "A." In any event, the vote of such member under the indicated circumstances could be a target of suspicion from many directions, regardless of the motivations behind the vote. Such suspicions, once aroused, might inevitably lead to misunderstandings and possible unspoken recriminations that could eventually reach the classrooms and the impairment of the highest attainable standards of instruction would be the probable result of such an atmosphere. This would obviously not be a desirable or healthy situation, and is one that should be prevented from arising if at all possible.

Clearly, this language points out a real possibility of friction. But does it reveal two offices, one of which is "subordinate to, or in any way a check upon the other"? (State ex rel. Attorney General v. Gebert, supra). Each position--teacher and member of a local district board of education--bears a relationship to the county board of education or its superintendent which could be described as "subordinate" or "a check upon the other". But the offices themselves are wholly independent. While they might exert some indirect influence upon each other through the county board of education, as my predecessor hypothesized, they clearly do not fit within the common law test of incompatibility.

A rule discussed in two of my previous Opinions is applicable here. See Opinion No. 71-081, Opinions of the Attorney General for 1971, and Opinion No. 72-066, Opinions of the Attorney General for 1972. These Opinions advised that a possible indirect connection between two public offices is "too remote and speculative to be given any weight", provided that the offices are part of "completely independent entities". Such is the case here. Accordingly, I am constrained to find the offices in question compatible., and to disapprove Opinion No. 1063, supra.

In specific answer to your questions, it is my opinion and you are so advised, that the positions of teacher in a local school district and member of the board of education of another local school district within the same county school district are compatible and may be held by one person at the same time. (Opinion No. 1063, Opinions of the Attorney General for 1959, disapproved.)