

conditioned to cover the faithful performance of the duties of the principal as Resident District Deputy Director assigned to Harrison and Carroll Counties.

Finding said bond proper as to form, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3506.

OFFICES INCOMPATIBLE—MEMBER OF BOARD OF EDUCATION OF CITY SCHOOL DISTRICT AND COUNTY DEPUTY AUDITOR.

*SYLLABUS:*

*The same person may not at the same time lawfully hold the position of member of a board of education of a city school district and deputy auditor of the county in which the school district is located.*

COLUMBUS, OHIO, August 13, 1931.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This is to acknowledge receipt of your request for my opinion in answer to the following question:

“May the same person hold the position of member of a board of education of a city school district and a deputy auditor of the county in which the school district is located?”

A “deputy” is defined in Bouvier’s Law Dictionary as:

“One authorized by an officer to exercise the office or rights which the officer possesses, for and in place of the latter.”

Section 9 of the General Code of Ohio provides:

“A deputy, when duly qualified, may perform all and singular the duties of his principal.”

A deputy county auditor acts for and in place of the auditor, and may perform all and singular the duties of the auditor. It is possible for a deputy auditor to act for the auditor in any circumstances, and his acts will be the acts of his principal. It is probable that the occasion often arises when it is necessary for a deputy auditor to act in place of the auditor himself.

It is a well known fact that in some counties the deputy auditor, by reason of long experience in the position, is more familiar with the duties of the auditor’s office than the auditor himself and does in fact perform the more technical duties of the office. In any case, he is required, by reason of his powers as fixed by Section 9, General Code, *supra*, to hold himself in readiness, and be at all times qualified, to act for and in the stead of his principal. He should be qualified the same way and to the same extent as the latter. Commenting on this fact, a former Attorney General, in speaking of a deputy city auditor, was prompted to say:

“Hence, if the person who fills the office of city auditor is disqualified by reason thereof from holding some other office or position, it would seem to follow clearly that the one who acts as his deputy would be likewise prohibited from doing so.”

—Opinions of the Attorney General, 1917, p. 1744.

To the same effect is an opinion of the Attorney General found in the Annual Report of the Attorney General for 1914, at p. 383, where it is said.

“The disability of a city auditor to hold certain positions would pass to his deputy who has the right to act for and in place of his principal, as to his official duties.”

See also Opinions of the Attorney General for 1929, p. 1984.

Under Section 2563, General Code, which section authorizes a county auditor to appoint deputies, a deputy so appointed is specifically charged with the duty of aiding the auditor, and it is a matter of common knowledge that a deputy auditor is frequently entrusted with the duty, and is oftentimes fully empowered, to act for his principal in any matter pertaining to the office, even to the extent of drawing warrants and signing the auditor's name thereto.

It remains, therefore, to inquire whether or not a county auditor may lawfully hold the position of member of a city board of education within the county.

In the absence of statutory prohibition on the simultaneous holding of two or more public offices or positions, the rule for determining whether or not such positions may be held at the same time by the same person is the common law rule of incompatibility stated in the case of *State, ex rel. v. Gebert*, 12 O. C. C. (N. S.) 274, 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.”

By virtue of Section 5625-1, General Code, a city board of education is constituted a “taxing authority” as the term is used in the act of the legislature of which said Section 5625-1, General Code, is a part.

By the terms of Sections 5625-19 to 5625-26, General Code, which sections are a part of the same act as is Section 5625-1, General Code, there is created in each county a county budget commission, consisting of the county auditor, the county treasurer and the prosecuting attorney, and the duties of said commission are fixed. It is provided therein that on or before the 15th day of July in each year, the taxing authority of each subdivision shall adopt a tax budget for the next succeeding fiscal year. Such budget shall present certain information in detail with respect to the financial needs of the taxing subdivision for the next succeeding fiscal year, and when said budget is adopted it shall be submitted to the county auditor on or before the 20th day of July of each year or at such later time as may be prescribed by the Tax Commission of Ohio. It thereupon becomes the duty of the county auditor to lay before the budget commission the annual tax budgets submitted to him, together with an estimate to be prepared by such auditor of the amount of any state levy, the rate of any school tax levy as theretofore determined, and such other information as the budget commission may request or the Tax Commission may prescribe.

Section 5625-24, General Code, provides as follows:

“The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust

the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom."

It is apparent from the foregoing, that the budget commission may be compelled to make changes in the original estimates made and contained in the budget submitted by the several school districts in the county and other taxing subdivisions within the county. In the event this becomes necessary, which is no doubt frequently the case, the duties of the county auditor, as a member of the county budget commission, would conflict with the duties of the members of a city board of education within the county, who oftentimes are required to appear before the budget commission to insist upon the proper share of revenues for their district.

For these reasons, if for no other, it seems clear that the duties of a county auditor and those of the members of a city board of education within the county are conflicting, and therefore the two positions are incompatible.

I am, therefore, of the opinion in specific answer to your question, that the same person may not at the same time lawfully hold the position of member of a board of education of a city school district and deputy auditor of the county in which the school district is located.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

3507.

INHERITANCE TAX LAW—HOW REFUND MADE TO THE EXECUTOR OF AN ESTATE OF A PORTION OF TAX MONEYS FROM SAID ESTATE CREDITED TO THE SINKING AND GENERAL FUNDS OF A VILLAGE.

SYLLABUS:

*Where, after inheritance taxes on successions to the estate of a deceased person have been determined by the probate court and paid into the county treasury and have been distributed in the manner provided by section 5348-11, General Code, as enacted by the act of May 8, 1919, 108 O. L., Part I, 575, a refunder order for a part of such inheritance taxes has been made by the probate court and approved by the Tax Commission of Ohio, the executor of the estate of such deceased person, who paid such inheritance taxes, is entitled to the payment of such refunder order, to the full amount thereof, out of the undivided inheritance tax funds of the county; and upon such payment, the county auditor of the county is required to reimburse the undivided inheritance tax fund of the county, to the extent of the amount of such refunder chargeable against a village in the county receiving its share of the inheritance taxes so paid in, by executing his warrant in this amount in favor of the county treasurer against the undivided tax moneys in the county treasury; which general tax moneys of the county are to be reimbursed at the time of the next semi-annual settlement by deducting from the amount of general tax moneys which will be due to such village the amount paid from the undivided tax moneys of the county for and on account of that part of said inheritance tax refunder chargeable to such village.*