

531.

OFFICES COMPATIBLE—MEMBER OF COUNTY BOARD OF EDUCATION
AND MEMBER OF GENERAL ASSEMBLY.

SYLLABUS:

There is no constitutional or statutory inhibition preventing a member of a county board of education from serving at the same time as a member of the General Assembly.

COLUMBUS, OHIO, May 24, 1927.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of May 14th, requesting my opinion as follows:

“Your opinion is desired upon the following point:

Can a member of a county board of education serve as a member of the General Assembly?”

The question presented in your letter has heretofore been passed upon by this department in an opinion reported in the Annual Reports of the Attorney General for 1914, Vol. I, page 817. This opinion was followed in a later opinion dated April 1, 1920, Opinions, Attorney General, Vol. I, page 373.

In the opinion last above cited after referring to Sections 4728, 4728-1, 4729, 4730 and 4734 of the General Code, my predecessor in office quoted with approval several paragraphs from the former opinion, including the following:

“ * * * the inhibition contained in Section 19 of Article II, constitution of Ohio, which provides:

‘No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this state, which shall be created or the emoluments of which shall have been increased, during the term for which he shall have been elected,’

does not prevent a member of the General Assembly from being elected to the county board of education, since the members of this board are elected and not appointed.

Article II, Section 4 of the constitution of Ohio, which provides:

‘No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to, or have a seat in, the General Assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia,’

will not prevent members of the general assembly from being elected to the county board of education, because the office of member of the county board of education is not a lucrative office, nor do I find any other provision in the constitution that would prevent a member of the general assembly being elected to this office.”

He then said as follows:

“It is possible that you have in mind the amendment to Section 4734 G. C.,

effective September 22, 1919, which amendment stated a specific sum that should be allowed to the members of the county board of education as their expenses for attendance upon any meetings of the county board of education.

When the opinion herein quoted from was issued by the attorney general, Section 4734 G. C., read as follows:

'Each member of the county board of education shall be paid his actual and necessary expenses incurred during his attendance upon any meeting of the board. Such expenses, and the expenses of the county superintendent, itemized and verified shall be paid from the county board of education fund upon vouchers signed by the president of the board.'

Under the above reading of Section 4734, the attorney general pronounced the office of member of the county board of education as not a lucrative office. Section 4734, which was construed in the original opinion herein given, now reads as follows: (108 O. L. 707)

'Each member of the county board of education shall be paid three dollars a day and mileage at the rate of ten cents a mile one way, to cover his actual and necessary *expense incurred* during his attendance upon any meeting of the board. *Such expenses*, and the expenses of the county superintendent, itemized and verified shall be paid from the county board of education fund upon vouchers signed by the president of the board.'

It would appear therefore that there has been no material change in the language of Section 4734 G. C., except that the necessary expenses incurred had a limitation put upon them after September 22, 1919; that is, three dollars per day, and nowhere in such section is there any indication that such three dollars is to be considered as compensation.

Since the section provides for the expenses of the member of the county board of education, and not for his compensation, it must be held that the office of member of the county board of education is not a lucrative office and therefore is not one of those offices which fall within those named in Article II, Section 4 of the constitution of Ohio, which latter offices, where they are lucrative ones, are prohibited from being held by a member of the General Assembly."

While Sections 4728, 4728-1 and 4729, *supra*, have been amended since the date of the opinion of April 1, 1920, above referred to (109 v. 242), so as to provide for the election of members of the county board of education by the electors residing in the county school district instead of by the presidents of the various village and rural boards of education as was done prior to the amendment, I am of the opinion that this in no way affects your question. I find no other changes in any of the sections of the General Code above enumerated, or any other section, which would in any wise affect the reasoning and conclusions of the two former opinions herein cited, with which I agree.

While neither of these former opinions considered the provisions of Section 15, General Code, which make members of the General Assembly ineligible to certain appointments and employments, in view of the holding that the office of member of a county board of education is not an office "which provides other compensation than actual and necessary expenses," it is my opinion that this section is not applicable to the question here under discussion.

I am therefore of the opinion that there is no provision of the constitution of Ohio and no statute preventing a member of a county board of education from serving at the same time as a member of the General Assembly.

Respectfully,
EDWARD C. TURNER,
Attorney General.