

Note from the Attorney General's Office:

1927 Op. Att'y Gen. No. 27-1288 was questioned by
1979 Op. Att'y Gen. No. 79-111.

1288.

OFFICES—PRINCIPAL, SUPERINTENDENT OF SCHOOLS OR TEACHER IN RURAL OR VILLAGE SCHOOL DISTRICT AND MEMBER OF COUNTY BOARD OF EDUCATION FOR THE COUNTY TO WHICH SUCH SCHOOL DISTRICT BELONGS, INCOMPATIBLE.

SYLLABUS:

The position of principal or superintendent of the schools of a rural or village school district, or teacher in such schools, is incompatible with membership on the county board of education for the county school district to which such rural or village school district belongs.

COLUMBUS, OHIO, November 23, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication in which you submit for my consideration two questions:

“(1) Are the offices of executive head, whether the designation be superintendent or principal, of a local school system and member of county board of education incompatible?”

“(2) Are the offices of teacher and member of county board of education incompatible?”

The rule of incompatibility of offices frequently referred to by the courts of this state is stated in *State ex rel., vs. Gebert*, 12 O. C. C. (N. S.) 274, 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 is stated in R. C. L. Vol. 24, page 573, thus:

“Incompatibility between offices is an inconsistency between the functions thereof, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person faithfully and impartially to discharge the duties of both.”

While neither the executive heads of local school systems nor teachers in the public schools are public officers as that term is used in the constitution and statutes, they are public employes and the same rule as to incompatibility is applicable to them as to public officers.

By the terms of Section 7610-1, General Code, it is provided:

“If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, or to provide for the continuance of any school in the district, for at least thirty-two weeks in the year, or to provide for each school an equitable share of school advantages as required by this title, or to provide suitable school houses for all the schools

under its control, or to elect a superintendent or teachers, or to pay their salaries, or to pay out any other school money, needed in school administration, or to fill any vacancies in the board within the period of thirty days after such vacancies occur, the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them."

In cases where the county board of education takes over the management of local school systems within the county district, by virtue of the authority vested in it by the terms of Section 7610-1, *supra*, the teachers, principals and superintendents of such local school systems would, while the county board was exercising the functions of the local board, bear the same relation to such teachers, principals and superintendents as the local board would bear at other times. And it is clear that the duties incumbent upon an employe would be incompatible with the duties of his employer.

The question might arise whether or not, when the incompatibility between offices or public employments would not exist except upon the happening of certain contingencies, the positions would be said to be incompatible before the contingencies arise or only after the happening of the occurrences upon which the contingency hinges. I do not find that this question has ever been considered by the courts or text writers.

It would seem apparent to me, however, that when an officer was elected or appointed for a definite term or an employe was employed by contract for a definite time, as are teachers, principals and superintendents of the schools in local districts, if there be a possibility of the contingency arising during the term of office or during the time which the contract of employment covers, which would make a position incompatible, the rule of incompatibility would apply.

In an early English case, *Rex vs. Tizzard*, 9 B & C 418, Judge Bailey in speaking of incompatibility of offices uses this language:

"I think that the two offices are incompatible when the holder cannot in every instance discharge the duty of each."

I am therefore of the opinion that the position of principal or superintendent of the schools of a rural or village school district, or teacher in such schools, is incompatible with membership on the county board of education for the county school district to which such rural or village school district belongs.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1289.

DISAPPROVAL, BONDS OF HARRISON TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY—\$35,000.00.

COLUMBUS, OHIO, November 23, 1927.

Re: Bonds of Harrison Township Rural School District, Montgomery County, \$35,000.00.