

**OPINION NO. 86-004**

**Syllabus:**

A judge of a municipal court is prohibited by Ohio Const. art. IV, §6(B) and R.C. 1901.11 from holding

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the position of member of a board of education of a local school district.

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To: Charles L. Bartholomew, Wyandot County Prosecuting Attorney, Upper Sandusky, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, February 4, 1986

I have before me your request for my opinion whether the positions of member of a board of education of a local school district and judge of a municipal court are compatible.

In order to determine whether two public positions are compatible, it must be considered whether, inter alia, there exist any pertinent constitutional or statutory provisions which limit the outside employment of one or both of the officials involved. 1979 Op. Att'y Gen. No. 79-111.

Ohio Const. art. IV, §6(B) states in part: "Judges shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or of the United States," and has been interpreted as prohibiting judges of municipal courts from holding any office of profit or trust. See 1973 Op. Att'y Gen. No. 73-082; 1973 Op. Att'y Gen. No. 73-081. R.C. 1901.11 similarly states in part that, "[n]o municipal judge shall hold any other office of trust or profit under the authority of this state or the United States." Thus, if the position of board of education member is an office of trust or profit under the authority of this state, a municipal court judge is prohibited from holding such position.

In State ex rel. Bricker v. Gessner, 129 Ohio St. 290, 195 N.E. 63 (1935), the court considered the characteristics of a public office for purposes of construing the prohibition now found in art. IV, §6(B), and stated as follows:

"[A] public office is a charge or trust conferred by public authority for a public purpose, the duties of which involve in their performance the exercise of some portion of the sovereign power, whether great or small. A public officer is an individual who has been appointed or elected in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the public assigned to him by law."

..."A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer." (Citations omitted.)

129 Ohio St. at 293-94, 195 N.E. at 65.

Members of boards of education are elected to their positions pursuant to R.C. 3313.01, and are required to take an oath by R.C. 3313.10, which refers to the position of board member as an "office." The duties of a board of education are prescribed by various statutes, see, e.g., R.C. Chapter 3313, and involve administration of the public school system, a sovereign function of government. More specifically, boards of education have been characterized as:

"agents of the state for the purpose of carrying on the affairs of the state, and they may be characterized as public school agents--that is, they are the arms, agencies, or instrumentalities of the state for the promotion of education throughout the state by the establishment of a statewide system of common schools, or agencies of the state for the organization, administration, and control of the public school system of the state separate and apart from the usual political and governmental functions of other subdivisions of the state."

....  
"It is well settled that a board of education is a quasi corporation acting for the public as one of the state's ministerial education agencies 'for the organization, administration and control of the public school system of the state.'" (Citations omitted.)

Brown v. Board of Education, 17 Ohio App. 2d 1, 3, 5, 243 N.E.2d 767, 768, 769 (Huron County 1969), rev'd on other grounds, 20 Ohio St. 2d 68, 253 N.E.2d 767 (1969).

Thus, I believe it is apparent that the position of member of a board of education is an office of trust under the authority of this state. See 1985 Op. Att'y Gen. No. 85-036 and 1980 Op. Att'y Gen. No. 80-050 (a member of a board of education is a public officer for purposes of Ohio Const. art. II, §20). Further, board of education members are compensated for their service. R.C. 3313.12. Thus, the position is also an office of profit. See generally 1986 Op. Att'y Gen. No. 86-002.

Because the position of member of a board of education is an office of trust and profit under the authority of this state, a municipal court judge is prohibited from holding such position.

In conclusion, it is my opinion, and you are so advised that, a judge of a municipal court is prohibited by Ohio Const. art. IV, §6(B) and R.C. 1901.11 from holding the position of member of a board of education of a local school district.