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SYLLABUS:

Neither the position of clerk of the board of education of a city school district nor that of clerk of the board of elections in the same county is subordinate to or in any way a check upon the other, and therefore, one person may discharge the duties of both; provided that it is not physically impossible to do so which is a factual matter determined by their required time of service in each position.

Columbus, Ohio, September 27, 1963

Hon. Roger W. Tracy
Auditor of State
State House
Columbus, Ohio

Dear Sir:

You request my opinion on the following question:

“May the clerk of the board of education of a city school district also serve as clerk of the board of elections

in the same county in which the city school district is located?"

I have found no express statutory or constitutional provision which would prohibit the simultaneous holding of the two positions in question. The question of compatibility of the two offices must therefore be decided by the common-law rule of incompatibility as stated in *State of Ohio, ex rel. Attorney General vs. Frank 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."

The relevant part of Section 3313.22, Revised Code, is as follows:

"The board of education of each local, exempted village, and city school district at an organization meeting shall elect a clerk * * * The clerk shall initially serve for a two-year probationary term and thereafter, if reappointed, shall serve for a four-year term. Such clerk may be removed at any time for cause by a two-thirds vote of the entire board. If reappointed as provided in this section, the board shall execute a written contract of employment for such four-year term and each four-year term thereafter. * * *"

Thus the clerk of the city board of education is not elected by the voters of the city under the supervision of the county board of elections.

While Section 133.01 (D), Revised Code, provides that the clerk of the board of education of a school district is the "fiscal officer", paragraph (C) of that section is as follows:

" 'Taxing authority' or 'bond issuing authority' means * * * in case of a school district, the board of education."

Section 3313.51, Revised Code, provides as follows:

"In every school district the clerk of the board of education shall be the treasurer of the school funds. No moneys of a school district shall be paid out except on a check signed by not less than two officers of the school district, one of whom shall be the clerk and the other shall be the president, vice-president, business manager, or assistant superintendent in charge of business administration.

If the clerk is incapacitated in such manner that he is unable to sign such checks, the board may appoint an officer of the school district to sign such checks in the capacity of the clerk; provided the two officers who sign such checks shall not be the same person. Payroll disbursements constitute an exception to this requirement if otherwise provided by law. All moneys received by a clerk of a school district from any source whatsoever shall be immediately placed by him in a depository designated by the board of education of such school district, as provided by sections 135.01 to 135.23, inclusive of the Revised Code."

Hence the statement, regarding the duties of the clerk of a board of education in Ohio, in 36 Ohio Jurisprudence, Section 127, page 160, is correct. It is as follows:

"The clerk is but a bookkeeper of the board of education, having charge of its records and accounts, and his duties are mostly of a clerical and ministerial character."

As to the clerk of the county board of elections, by Section 3501.09, Revised Code, he must be a resident elector of the county, not a member of the board, selected by the board, and if he is not so selected after five ballots, the clerk shall be designated by the secretary of state.

The relevant duties of the clerk of the board of elections are stated in Section 3501.13, Revised Code, as follows:

"The clerk of the board of elections shall keep a full and true record of the proceedings of the board and of all moneys received and expended; file and preserve in its offices all orders and records pertaining to the administration of registrations, primaries, and elections; receive and have the custody of all books, papers and property belonging to the board; and shall perform such other duties in connection with his office and the proper conduct of elections as the board determines.

"* * *

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Section 3501.15, Revised Code, is as follows:

"No person shall serve as a member, clerk, deputy clerk, assistant clerk, or employee of the board of elections who is a candidate for any office to be filled at an election, except the office of delegate or alternate to a convention, member of the board of directors of a county agricultural society, presidential elector, or a member of a party committee. * * *"

This is the only express statutory prohibition placed upon the clerk of the board of elections and it is not applicable to his service as clerk of the city board of education. Indeed, his service as clerk of the board of elections is obviously one which involves all elections including candidates for all public offices, including those of the party of which he may be an active member of the party committee, as well as all other issues even if endorsed or opposed by his political party, but without any checking authority to influence such elections or the results thereof.

It is therefore my opinion that neither the position of clerk of the board of education of a city school district nor that of clerk of the board of elections in the same county is subordinate to or in any way a check upon the other, and therefore, one person may discharge the duties of both; provided that it is not physically impossible to do so which is a factual matter determined by their required time of service in each position.

Respectfully,
WILLIAM B. SAXBE
Attorney General