

year: *And provided further*, That the Secretary of War is empowered to make all rules and regulations necessary to carry into effect the provisions of this section."

50. "Under such regulations as may be prescribed by the Secretary of War, property and disbursing officers of the National Guard accountable for public monies may intrust money to other officers of the National Guard for the purpose of having them make disbursements as their agents, and the officers to whom the money is intrusted, as well as the officer intrusting the same to him, shall be held pecuniarily responsible therefor to the United States, and the agent officer shall be subject for his official misconduct to all the liabilities and penalties prescribed by law in like cases for the officer for whom he acts as agent."

It is manifest from the foregoing provisions, that in so far as the United States property and disbursing officer for Ohio disburses Federal funds as an agent of the Federal Government, under the provisions of Section 5527, General Code, the motor vehicle fuel purchased by said officer with said Federal funds would be exempt from the payment of the motor vehicle fuel tax.

It is therefore my opinion that the motor vehicle fuel purchased by the United States property and disbursing officer for Ohio with Federal funds for the use of The Ohio National Guard is exempt from the payment of the motor vehicle fuel tax.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1713.

OFFICES INCOMPATIBLE—TEACHER AND CLERK OF RURAL BOARD OF EDUCATION.

*SYLLABUS:*

*A teacher in the public schools while under contract of employment by a board of education of a rural school district may not legally fill the position of clerk of said board.*

COLUMBUS, OHIO, February 14, 1928.

HON. J. B. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—I am in receipt of your communication in which, after directing my attention to a certain rural school district in Defiance County, you request my opinion as to whether or not a regularly employed and acting teacher in such district may, during the term of said employment, be elected to and fill the position of clerk of the board of education for said district. Sections 4747, 7784 and 7786 of the General Code, read, in part, as follows:

Sec. 4747. "The board of education of each city, exempted village, village and rural school district shall organize on the first Monday of January after the election of members of such board. One member of the

board shall be elected president, one as vice-president and a person who may or may not be a member of the board shall be elected clerk. \* \* \*

Sec. 7764. "Boards of education shall require all teachers and superintendents to keep the school records in such manner that they may be enabled to report annually to the county auditor and superintendent of public instruction as required by the provisions of this title and shall withhold the pay of such teachers and superintendents as fail to file the reports required of them. \* \* \*

Sec. 7786. "No clerk of a board of education shall draw an order for the payment of a teacher for services until the teacher files with him such reports as are required by the director of education, by the board of education and the superintendent of schools, and a written statement from the county, city or exempted village, superintendent of schools that the teacher has filed with him a legal teacher's certificate (or true copy thereof) to teach the subjects or grades taught, with the dates of its validity. \* \* \*

While neither the clerk of a board of education nor a teacher in the public schools is a public officer, as the term is used in the Constitution of Ohio, yet both are public employes, and the rule of incompatibility of offices applies as well to public employments as to public offices.

The rule of incompatibility of public offices most cited in Ohio is stated by the Circuit Court in the case of *State of Ohio, ex rel Attorney General, 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."

It will be observed that by the provisions of Section 7784, supra, certain reports must be filed by teachers and that the teachers' pay shall be withheld until the proper reports are made and filed.

One of the duties of a clerk of a board of education is to draw orders for the payment of teachers' salaries. By the terms of Section 7786, supra, the clerk is prohibited from drawing these orders until the reports which the law requires teachers to make are filed with him. He is also prohibited from drawing orders for teachers' pay until there is filed with him a statement from the superintendent of schools that the teacher has been properly certificated.

As the clerk is the sole judge of whether or not these reports and statements have been filed, and is prohibited from drawing orders for teachers' salaries until the reports and statements are filed, it seems clear, that in that respect, at least, the clerk is a check upon the teacher, and for that reason, if for no other, the positions are incompatible.

This question has been passed upon in several former opinions of this department, the most recent of which are reported in the Opinions of the Attorney General for 1915 at page 2229, and in the Opinions of the Attorney General for 1918 at page 223, in each of which opinions the Attorney General expressed the same opinion as that which I have hereinbefore stated.

I am therefore of the opinion that a teacher in the public schools while under employment and acting as such teacher, is not eligible to fill the position of clerk of the board of education for the district in which he is employed as teacher.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*