

however, if such order is made, it may not be provided therein that land-owners and their tenants are permitted to trap raccoon within ten feet of such tile or culvert.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4984.

APPROVAL, BONDS OF CITY OF GARFIELD HEIGHTS, CUYA-
HOGA COUNTY, OHIO, \$3,000.00.

COLUMBUS, OHIO, December 10, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4985.

APPROVAL, BONDS OF CITY OF EUCLID, CUYAHOGA
COUNTY, OHIO, \$31,000.00.

COLUMBUS, OHIO, December 10, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4986.

OFFICES COMPATIBLE—MEMBER RURAL BOARD OF
EDUCATION AND COUNTY ATTENDANCE OFFICER.

SYLLABUS:

A member of a rural board of education, who is not a member of a county board of education, may at the same time hold the position of county attendance officer, if it is physically possible to perform the duties of both positions.

COLUMBUS, OHIO, December 10, 1935.

HON. MANNING D. WEBSTER, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“I will appreciate you rendering this office your opinion on the following:

A county attendance officer employed by our county Board of Education, under G. C. 7769-1, has been elected as a member of a rural Board of Education of this county. Are such offices compatible?”

The statutes relative to your question do not specifically preclude one and the same person from holding the offices in question simultaneously. However, it is necessary to determine whether or not these offices are incompatible by reason of the common rule of incompatibility. A good definition of the common law test of incompatibility is to be found in 46 *Corpus Juris*, pages 941 and 942, as follows:

“At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But where the functions of two offices are inconsistent, they are regarded as incompatible.”

In your letter you do not state whether or not the member of the rural board of education is also a member of the county board of education that appointed the county attendance officer. By virtue of Section 4728, General Code, a member of a county board of education may or may not be a member of a local board of education. If a member of a rural board of education was also a member of a county board of education, he could not, of course, appoint himself as county attendance officer. It has often been declared to be against public policy for a member of a board to appoint himself to a position under such board. From your letter, however, I assume that the member of the rural board in question is not also a member of the county board of education.

The duties of a county attendance officer are set out in Sections 7769-2, 7770, 7771, 7773-1, 7777 and 7780, General Code. In general the duties of a county attendance officer consist of investigating the non-attendance of pupils at school, the employment of minors, the enforcement of laws relative to compulsory education and the performance of such other service as the Superintendent of Schools or the board of education may deem necessary to preserve the morals and secure the good conduct of school children. The attendance officer and his assistants are vested with police powers and the authority to serve warrants and to enter workshops, factories, stores and all other places where children are employed, and to do whatever is necessary in

the way of investigation and otherwise enforcing the laws relating to compulsory education and the employment of minors.

An examination of the duties relative to a county attendance officer, as well as of those of a member of a rural board of education, does not disclose any inconsistency between the duties of these two offices.

Sections 12980 and 12982-1, General Code, read as follows:

Sec. 12980:

“Whoever, being an *officer* of a board of education or a superintendent, principal or teacher of a public, private or parochial school or a juvenile examiner refuses or neglects to perform a duty imposed upon him by the laws relating to compulsory education and the issuance of age and schooling certificates or declines to give the information necessary for the execution of these laws shall upon conviction be fined not less than twenty nor more than fifty dollars. Continued refusals to perform the duties or give the information shall constitute additional violations of the statutes relating to compulsory education and the issuance of age and schooling certificates.”

Sec. 12982-1:

“The attendance officer or any inspector of the industrial commission of Ohio shall when a violation of §12976, 12977, 12978, 12979 or 12980, General Code, comes to his attention make complaint against the person or employer violating it in any court having jurisdiction.”

At first blush, it might appear that these two sections would constitute a certain inconsistency in the duties of a county attendance officer and a member of a rural board of education. However, Section 12980 is a criminal statute and should be strictly construed and should not be given a construction which would include persons within its provisions, where such persons are not expressly included.

I am of the opinion that the word “officer” in Section 12980, *supra*, could not be construed to include a member of a Board of Education.

After an examination of the statutes and the duties of these positions, it would appear that there is nothing to prevent one and the same person from holding the two positions in question at the same time, if it is physically possible to perform the duties of these two positions. This office has in numerous opinions held that the question of physical possibility to discharge the duties of various positions is a question of fact rather than of law. A few of the recent opinions of this office to this effect are as follows:

Opinions of the Attorney General for 1933, Vol. 1, p. 360, p. 763; 1933, Vol. 2, p. 1213 and 1934, Vol. 1, p. 162.

Without extending this discussion, it is my opinion, in specific answer to your question, that a member of a rural board of education who is not a member of a county board of education, may at the same time hold the position of county attendance officer, if it is physically possible to perform the duties of both positions.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4987.

APPROVAL, BONDS OF ROCKY RIVER VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$85,000.00 (UNLIMITED).

COLUMBUS, OHIO, December 11, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4988.

APPROVAL, BONDS OF ELYRIA CITY SCHOOL DISTRICT, LORAIN COUNTY, OHIO, \$41,600.00.

COLUMBUS, OHIO, December 11, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4989.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, December 11, 1935.

Industrial Commission of Ohio, Columbus, Ohio.