

5294.

OFFICES COMPATIBLE—CORONER AND MEMBER OF COUNTY BOARD OF ELECTIONS—WHEN CORONER CANDIDATE FOR ELECTION MAY NOT BE MEMBER OF SUCH BOARD.

SYLLABUS:

1. *A coroner who is not a candidate for election, may be a member of a county board of elections, if it is physically possible to perform the duties of both offices.*
2. *A coroner who is a candidate for election, may not at the same time be a member of a county board of elections.*

COLUMBUS, OHIO, March 25, 1936.

HON. GEORGE L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

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

“The first of this year the regularly elected County Coroner resigned his office and another party was appointed to the position of County Coroner, as provided by law. This appointee has now been recommended by his party as a member of the County Board of Elections, and he desires to know if the office of County Coroner and member of Board of Elections are incompatible under these circumstances.”

You do not state whether or not the person in question is a candidate for re-election. If he is not, or does not become a candidate for re-election to the office of county coroner, it would seem that there is no incompatibility in the holding of these two offices by one and the same person. Based upon the above assumption, the statutes in this state 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 law 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.”

This office has held in past opinions that a member of a county board of elections may at the same time hold certain public offices if it is physically possible to perform the duties of both positions. See for example, Opinions of the Attorney General for 1933, Volume 1, Page 763, Opinions of the Attorney General for 1934, Volume 1, Page 414. Neither a member of the county board of elections nor the county coroner must devote his full time to the duties of his office. As to whether or not it would be physically possible to perform the duties of both positions, this office has taken the position that the determination of this question is one 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, Volume 1, Page 360; Opinions of the Attorney General for 1933, Volume 1, Page 763; Opinions of the Attorney General for 1933, Volume II, Page 1213 and Opinions of the Attorney General for 1934, Volume I, Page 162.

However, if the person in question becomes a candidate for reelection as county coroner or for some other office, at a primary or general election, it would be necessary to consider the provisions of Section 4785-16, General Code. This section reads as follows:

“No person shall serve as a member, clerk, deputy clerk, assistant clerk, or employe of the board of elections who is a candidate for an office to be filled at an election, except the office of delegate or alternate to a convention or a member of a party committee.”

The above section, which was passed in 113 Ohio Laws, 307, was formerly contained in Section 5092, General Code. Repealed Section 5092, General Code, read as follows:

“No person, being a candidate for an office to be filled at an election, other than for committeeman or delegate or alternate to any convention, shall serve as deputy state supervisor or clerk thereof, or as a judge or clerk of elections, in any precinct of such elections. A person serving as deputy state supervisor or clerk thereof, judge or clerk of elections contrary to this section shall be ineligible to any office to which he may be elected at such election.”

An interesting opinion concerning repealed Section 5092 is to be

found in Opinions of the Attorney General for 1920, Volume I, Page 571. The third branch of the syllabus of that opinion reads as follows:

“3. Section 4967 G. C. makes the provisions of section 5092 G. C. applicable to primary elections and to candidates for nomination at such primary elections, and a candidate for nomination at a primary election or a candidate for election at the general election or a special election, cannot legally act as clerk of the board of deputy state supervisors at such election. If a candidate so serves, his nomination at such primary election, or his election at any general or special election, whether nominated by petition or otherwise, would be illegal and void if such person was a clerk in the employ of the deputy state supervisors of elections while a candidate.”

The following appears at Page 575:

* * * * *

It would thus appear that in a non-registration city there is no incompatibility between the duties of the two positions mentioned. Under certain circumstances and at some particular time when the person occupies both the position of clerk of the board of deputy state supervisors of elections and that of city auditor, a candidate for re-nomination or re-election for city auditor, or nomination or election to another office, would be ineligible under section 5092 G. C., supra to any nomination made at such nominative primary election, as well as being ineligible to any office to which he may be elected at any general or special election, whether nominated in a primary or by petition, if such person was the clerk in the employ of the deputy state supervisors of elections while a candidate for nomination or election. But where the person holding both employments is not a candidate, he can hold both at one and the same time. * * *

However, the language of present Section 4785-16, General Code, would indicate that a candidate who runs for public office and who is a member, clerk, deputy clerk, assistant clerk or employe of a board of elections, would not be precluded from accepting the office to which he was elected, merely because of his connection with the board of elections. To this effect see the Opinions of the Attorney General for 1933, Volume III, Page 1913. The syllabus of that opinion reads as follows:

“Where a person who serves as a member, clerk, deputy clerk, assistant clerk, or employe of a board of elections is a

candidate for office, and is elected to such office, that fact alone does not make such person ineligible to the office to which he was elected."

However, an examination of the above opinion, as well as of Section 4785-16, General Code, clearly indicates that a county coroner could not be a candidate for re-election while he is a member of the board of elections, without violating the express provisions of Section 4785-16, General Code. In other words, he would not be eligible to retain his standing as a member of the board of elections but if he did, such would not invalidate his election as county coroner. A person violating Section 4785-16, General Code, could no doubt be removed from his position with the board of elections by appropriate proceedings.

Without further extending this discussion, it is my opinion:

1. A coroner who is not a candidate for election, may be a member of a county board of elections, if it is physically possible to perform the duties of both offices.

2. A coroner who is a candidate for election, may not at the same time be a member of a county board of elections.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5295.

SCHOOL FOUNDATION LAW—METHOD OF DISTRIBUTING
PROCEEDS UNDER SUCH LAW—CONFLICT BETWEEN
SECTIONS 7595-li AND 4744-1, G. C.

SYLLABUS:

1. *To the extent that the Provisions of Section 7595-li, General Code, as enacted June 12, 1935, in what is known as the School Foundation Law (House Bill No. 466, of the 91st General Assembly) relating to funds for the use of a county board of education for the payment of salaries and contingent expenses are inconsistent with the provisions of Sections 4744-1, 4744-2 and 4744-3, General Code, relating to the same subject and being enactments of an earlier date, said Sections 4744-1, 4744-2 and 4744-3, General Code, are repealed by implication, otherwise, all these statutes being in pari materia, should be regarded as parts of a connected whole and harmonized so far as possible, without doing violence to any.*

2. *In accordance with a budget of operating expenses prepared and submitted to the Director of Education by each county board of education*