

## OPINION NO. 74-006

**Syllabus:**

A member of a board of education may also serve as a member of a board of elections if he is not a candidate for an elective office other than those specifically excepted by R.C. 3501.15.

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**To:** John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio  
**By:** William J. Brown, Attorney General, February 1, 1974

You have requested my opinion as to whether a person who is a member of a board of education may be appointed as a member of a county board of elections.

Appointments to boards of elections are made pursuant to R.C. 3501.06 and R.C. 3501.07. Candidates for an elective office are precluded from serving as a member of a board of elections by R.C. 3501.15 which provides in part:

"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. \* \* \*"

Members of boards of education are prohibited from holding certain positions. R.C. 3313.13 provides as follows:

"No prosecuting attorney, city solicitor, or other official acting in a similar capacity shall be a member of a board of education."

Furthermore, the provisions of R.C. 3313.70 read as follows:

"No member of the board of education in any district shall be eligible to the appointment of school physician, school dentist, or school nurse during the period for which he is elected."

I find nothing in the above statutes which would preclude a person from holding the two positions in question, unless he is running for reelection to the board of education or is a candidate for any other office not specifically excepted from the restrictions of R.C. 3501.15.

It is, therefore, necessary to consider the positions in light of the common law rule of incompatibility of officers. That rule was defined in State, ex rel. Attorney General v. Gebert, 12 Ohio C.C.R. (n.s.) (1909), as follows:

"Officers 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."

See also the following language in State ex rel. Baden v. Gibbons, 17 Ohio L. Abs. 341, 344 (Butler Co. Ct. App. 1934):

"It has long been the rule in this state that one may not hold two positions of public employment when the duties of one may be so administered and discharged that favoritism and preference may be accorded the other, and result in the accomplishment of the purposes and duties of the second position, which otherwise could not be effected. To countenance such practice, would but make it possible for one branch of government or one individual to control the official act and discretion of another independent branch of the same government or of interlocking governments which are constructed so as to operate in conjunction with each other. If the possible result of the holding of two positions of public trust leads to such a situation, then it is the rule, both ancient and modern, that the offices are incompatible and are contrary to the public policy of the state. (Emphasis added.)

Contact between a board of education and the county board of elections may generally be found in one of two situations. The first occurs with the nomination and election of members of the board of education. Any possibility of incompatibility is avoided here by the prohibition in R.C. 3501.15 against candidates for an elective office serving on a board of elections. My information is that the individual involved here is not presently a candidate for election to any office.

The second area of contact between the two boards involves the submission of issues to the electors for approval. These issues include tax levies in excess of the ten-mill limitation, the approval of bond issues, and a variety of proposals to change boundaries of existing school districts, or to create new districts. The duty of a board of elections in such cases is to make all the "necessary arrangements" for the submission of the question to the electors. See for example R.C. 5705.21, R.C. 5705.25, and R.C. 3311.20 through R.C. 3311.38. However, I find nothing in these or other statutes which would authorize a board of elections to make a determination of the correctness or wisdom of a proposal of a board of education. Rather, the primary concern of a board of elections is to insure that the issues are properly presented on the ballot and that the election is conducted efficiently. R.C. 3501.11.

One of my predecessors had occasion to consider a similar question in Opinion No. 1730, Opinions of the Attorney General for 1952. That opinion concerned the positions of member of the board of health of a general health district and member of the county board of elections, and the effect on compatibility of a provision in G.C. 1261-40(a) for the submission to the electors of a tax levy designed to raise funds to meet the expenses of the general health district. The then Attorney General held that no incompatibility between the two positions resulted from this situation, and his reasoning was reaffirmed by a later Attorney General in Opinion No. 64-897, Opinions of the Attorney General for 1964.

In Opinion No. 63-103, Opinions of the Attorney General for 1963, the position of deputy clerk of a board of elections was held to be compatible with the office of member of the board of education of a local school district. And Opinion No. 66-053, Opinions of the Attorney General for 1966, held that the positions of clerk of a local board of education and member of a board of elections are compatible.

This long continued and unchallenged line of Opinions is entitled to great weight. Where an interpretation of a statute is reaffirmed and applied over a long period of time it will not be disturbed in the absence of compelling authority to the contrary. See The State, ex rel. Automobile Machine Co. v. Brown, Secy. of State, 121 Ohio St. 73, 75, 76 (1929); The State, ex rel. Brower v. Graves, 89 Ohio St. 24, 27-28 (1913); Miami Conservancy District v. Bucher et al., 87 Ohio App. 390, 396 (1949).

In specific answer to your question it is my opinion, and you are so advised, that a member of a board of education may also serve as a member of a board of elections if he is not a candidate for an elective office other than those specifically excepted by R.C. 3501.15.