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COMPATIBILITY—EXECUTIVE HEAD OF LOCAL SCHOOL DISTRICT NOT INCOMPATIBLE WITH POSITION OF CLERK OF THE BOARD OF EDUCATION OF THAT SCHOOL DISTRICT—LIMITS OF PHYSICAL POSSIBILITY.

SYLLABUS:

The position of executive head of a local school district is not incompatible with the position of clerk of the board of that school district, if it is physically possible for one person to occupy these two positions at one time.

Columbus, Ohio, March 22, 1957

Hon. James A. Rhodes, Auditor of State,
Columbus, Ohio.

Dear Sir:

I have before me your request for my opinion as follows:

“On December 31, 1956 you rendered Informal Opinion No. 597 as to the compatibility of offices concerning a Clerk of a school board and other employment by the district.

“R. C. 3313.22 states that the Clerk of a local School District, ‘may be a teacher *regularly employed as a teacher* by such board’.

“In the definition of the word “teacher” as found in Section (A) R. C 3319.09 the Code says :

“Teacher means all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification.’

“In Ross County in (C) Local School District, the Clerk of the board is the Executive Head of the school district and while such Executive Head comes under the definition of teacher as defined in R. C 3319.09, an opinion is requested in view of your holding in Informal Opinion No. 597 dated December 31, 1956, whether such a position is compatible with that of the Clerk of the board.”

Your attention is first directed to Opinion No. 1345, Opinions of the Attorney General for 1933, at page 1213, in which it was held :

“Public offices are incompatible when made so by express provision of constitution or statute, or when rendered such by operation of the common law test of incompatibility.”

An examination of the Ohio Constitution and applicable statutes discloses no express provision which would prevent a clerk of a local school district from also serving as executive head of that school district.

Since there are no statutory or constitutional provisions expressly prohibiting such a combination of offices, it is necessary to discuss whether Section 3313.22, Revised Code, in conjunction with Section 3319.09, Revised Code, authorize such a combination.

Section 3313.22, Revised Code, reads as follows :

“The board of education of each local, exempted village, and city school district at an organization meeting shall elect a clerk who may be a member of the board *and in the case of a local school district such clerk may be a teacher regularly employed as a teacher by such board.* Such clerk shall be elected for a term not to exceed four years. In the case of a county board, the county superintendent shall act as clerk of such board.”

(Emphasis added.)

Section 3319.09, Revised Code, reads in part as follows :

“As used in sections 3319.08 to 3319.18, inclusive of the Revised Code:

“(A) Teacher means all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification. * * *”

The following language of Section 3319.09, Revised Code, “*As used in sections 3319.08 to 3319.18, inclusive of the Revised Code:*” does not in and of itself prohibit the application of its definition of “teacher” to Section 3313.22, Revised Code. Since Section 3319.09, Revised Code, sets forth the only statutory definition of the term “teacher” it might reasonably be argued that this definition should be applied in interpreting Section 3313.22, Revised Code.

Without expressing any opinion on the question of whether the definition of the term “teacher” as set out in Section 3319.09, Revised Code, applies to this term as used in Section 3313.22, Revised Code, we may first consider whether such a combination of offices may be held by one person at the same time in view of the common law rule.

The common law test of incompatibility is well expressed in the case of State, *ex rel.* v. Gebert, 12 C. C., N. S., at page 275, 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 to discharge the duties of both.”

The executive head of a school district is mentioned once in Section 3319.02, Revised Code. The pertinent part reads as follows :

“* * * Upon recommendation of the county superintendent, a local board may designate a principal as executive head who may be employed as such for a period of twelve months.”

It is thus to be seen that an executive head of a local school must first qualify as a principal. To be designated as a principal, it is necessary first to be certified as a teacher. There are no statutory duties imposed upon the position of executive head. His duties and responsibilities, other than as principal, would appear to be a matter for designation by the local board. He is an employee of the board and his authority to act is conferred upon him by the local board. An executive head of a local school district may teach in the school, besides performing such administrative functions as the board may prescribe.

The powers and duties of a clerk of the board of education are discussed in 36, Ohio Jurisprudence, page 160, Section 127, as follows:

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

The clerk of each board of education has many statutory duties which are described in part in Section 3313.26, *et seq.*, Revised Code.

An executive head, as noted earlier, is an individual certified to teach school and often does teach school. In some districts where he is delegated broad administrative responsibilities, he does little, if any, teaching.

In Opinion No. 5811, Opinions of the Attorney General for 1955, page 594, it was held:

“The wife of a member of a board of education may lawfully be elected as clerk of said board and may also be appointed as secretary to a school superintendent.”

This opinion concludes that neither position has any power or control over the other and renders these two positions compatible.

Upon examination of the positions of executive head and clerk of the board of a local school district and the respective duties of each, I can see no reason why the two positions would be rendered incompatible by means of one being subordinate to, or in any way a check upon the other.

The sole remaining question is whether or not it is physically possible for one person to hold the two positions referred to in your communication, and this question is discussed in Opinion No. 338, Opinions of the Attorney General for 1933, at page 360, where it was held a question of fact rather than of law whether or not it is physically possible for one person to occupy two given offices at one time.

Accordingly, it is my opinion, and you are advised, that the position of executive head of a local school district is not incompatible with the position of clerk of the board of that school district, if it is physically possible for one person to occupy these two positions at one time.

Respectfully,
WILLIAM SAXBE
Attorney General