

taxing subdivisions and for the budget commission to call in the members of the several taxing boards in the county for conferences. When a board of township trustees and a board of education holding interlocking membership appear before the budget commission to urge the claims of their respective taxing subdivisions they clearly would appear as adversaries against themselves. No such reason, however, could be urged against the compatibility of membership on a county board of education and a township board of trustees for the reason that the county board of education is not a tax levying body and does not receive funds for its purpose from the budget commission but from moneys retained and set aside for that purpose by the county auditor.

I am therefore of the opinion, in specific answer to your question, that an elector in a township may hold the position of township trustee and member of a county board of education at one and the same time.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2897.

OFFICES COMPATIBLE—COUNTY RECORDER AND TOWNSHIP CLERK.

SYLLABUS:

The offices of county recorder and township clerk are compatible and may be held by one and the same person, if it is physically possible for one person to perform the duties of both offices.

COLUMBUS, OHIO, February 2, 1931.

HON. J. D. SEARS, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—Your recent inquiry reads as follows:

“Kindly give me your opinion as to whether the position of County Recorder and Township Clerk are compatible?”

I see no reason either statutory or otherwise why these two positions should not be compatible, but I would prefer having an opinion from your office in the matter.”

A township clerk is an elective township officer by virtue of Section 3299, General Code, while a county recorder is an elective county officer under the provisions of section 2750, General Code.

After a careful search of the Ohio Constitution and Ohio General Code, I am unable to find any provision that prevents a person from holding these two offices at the same time.

Therefore, since there is no provision in the Constitution of Ohio or statutes making these offices incompatible, it only remains to be determined whether said offices are incompatible under the test of the common law.

The common law rule is concisely set forth in the often cited case of *State ex rel. v. Gebert*, 12 C. C. (N. S.) 274, 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 person to discharge the duties of both.”

Applying this test, it would seem that there is no incompatibility in these two offices. In no way is the one subordinate to or a check upon the other, nor is either a full time position. Of course, it is a question of fact as to whether it is physically possible for one person to fully discharge the duties of both offices.

Therefore, in specific answer to your question, I am of the opinion that the offices of county recorder and township clerk are compatible and may be held by one and the same person, if it is physically possible for one person to perform the duties of both offices.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2898.

PURCHASE OF TRUCK—BY TOWNSHIP TRUSTEES ON DEFERRED PAYMENTS—TAX LEVY REQUIRED ON ALL INCORPORATED AND UNINCORPORATED TERRITORY IN TOWNSHIP TO REDEEM NOTES.

SYLLABUS:

When a truck is purchased according to the provisions of Section 7201, General Code, and notes are issued in payment thereof, a tax must be levied on all the taxable property located within an incorporated territory situate in the township for the payment of such notes and interest.

COLUMBUS, OHIO, February 2, 1931.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of the recent communication from your assistant, Huber J. Snyder, which reads as follows:

“Section 7201, General Code of Ohio, authorizes township trustees to purchase trucks upon terms, to wit: not less than one-third of the purchase price in cash, and the remainder not more than one-third to be paid within one year from the date of purchase, and not more than one-third within two years from the date of purchase. The statute further provides that township trustees shall make provision for levying and collecting annually by taxation an amount sufficient to pay the interest and provide a sinking fund for the final redemption for such notes at maturity.

“Should a tax be levied on all the taxable property in the entire township to pay off these notes or should a tax be levied only on the unincorporated territory in that township? In most of our townships there are municipal corporations which take up a part of the territory, and yet this machinery bought by the trustees is used only in the territory outside of the municipal corporations—and hence the question arises.”

Section 7201, General Code, to which you refer, reads as follows:

“County commissioners and township trustees, in the purchase of machinery, tools, trucks and other equipment for use in constructing, maintaining and repairing roads, shall be authorized to purchase such machinery, tools, trucks and equipment upon the following terms, to wit: not less than one-third of the purchase price thereof shall be paid in cash, and of the re-