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## SYLLABUS:

The office of deputy clerk of the board of elections is compatible with the office of member of the board of education of a local school district. Under Section 3501.15, Revised Code, however, no person shall serve as a deputy clerk of the board of elections who is a candidate for election to the office of member of a board of education of a local school district.

Columbus, Ohio, March 22, 1963

Hon. George E. Schroeder Prosecuting Attorney Putnam County Ottawa. Ohio

## Dear Sir:

In your request for my opinion you ask whether the office of deputy clerk of the board of elections is compatible with the office of member of the board of education of a local school district.

The only statutory prohibition against holding a second office while a member of a board of education is contained in Section 3313.13, Revised Code. This section reads as follows:

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

Since it is apparent that the office of deputy clerk of the board of elections does not fall within the prescribed class of offices set forth in Section 3313.13, *supra*, such section clearly has no application to the question before us.

Therefore, if the two offices in question are incompatible, it must be in consequence of the common-law rule found in *State*, *ex rel. Attorney General* v. *Gebert*, 12 O.C.C. (N.S.), 274, wherein it was stated:

"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.

There do not appear to be any duties of the one office in question which are inconsistent with the duties of the other office, nor will the performance of the duties of one result in antagonism or a conflict of duties with the other. Neither is one office subordinate to, nor in any way a check upon the other.

Whether or not incompatibility results because it is physically impossible for one person to discharge the duties of both offices is a question of fact to be determined by the local board of education and board of elections.

Before reaching my conclusion in this matter, I direct your attention to Section 3501.15, Revised Code, which reads in pertinent part as follows:

"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. \* \* \*"

Although Section 3501.15, *supra*, clearly prohibits a deputy clerk of a board of elections from holding such office during that period of time he is a candidate for any office to be filled by election, except as otherwise provided by such section, it should be noted that this section does not otherwise prohibit one person from simultaneously holding both offices in question.

This may be accomplished by various methods, depending, of course, upon the particular factual situation involved, viz., a person holding the office of deputy clerk of the board of elections could be appointed to fill a vacancy in the board of education pursuant to Section 3313.11, Revised Code, or, one duly elected to the board of education could be appointed to the office of deputy clerk of the board of elections.

It is therefore my opinion and you are advised that the office of deputy clerk of the board of elections is compatible with the office of member of the board of education of a local school district. Under Section 3501.15, Revised Code, however, no person shall serve as a deputy clerk of the board of elections who is a candidate for election to the office of member of a board of education of a local school district.

Respectfully,
WILLIAM B. SAXBE
Attorney General