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COMPATIBILITY—TOWNSHIP TRUSTEE AND SCHOOL BUS DRIVER; COMPATIBLE—MAYOR OF VILLAGE AND COUNTY CIVIL DEFENSE DIRECTOR, §5915.06 R.C.; INCOMPATIBLE—MAYOR OF VILLAGE AND SCHOOL BUS DRIVER; COMPATIBLE, LIMITS OF PHYSICAL POSSIBILITY—COUNTY CIVIL DEFENSE DIRECTOR AND SCHOOL BUS DRIVER; COMPATIBLE, LIMITS OF PHYSICAL POSSIBILITY.

## SYLLABUS:

1. The office of township trustee is compatible with the position of school bus driver.
2. The office of mayor of a village is incompatible with that of county civil defense director appointed pursuant to Section 5915.06, Revised Code.
3. A village mayor may legally hold the position of school bus driver, unless his duties as bus driver make it physically impossible for him to perform the duties of both positions.
4. A county civil defense director may be employed as a school bus driver, subject to the proviso that it is physically possible to perform the duties of both positions.

Columbus, Ohio, May 16, 1958

Hon. James K. Leedy, Prosecuting Attorney  
Wayne County, Wooster, Ohio

Dear Sir:

Your request for my opinion presents the following question:

1. May the same person hold the office of township trustee and at the same time be employed by a local board of education as a school bus driver?
2. May one person hold the office of county civil defense director, mayor of an incorporated village, and still be employed by the local board of education as a school bus driver?

In answer to your first inquiry, I invite your attention to Opinion No. 6398, Opinions of the Attorney General for 1956, p. 271, the syllabus in which reads:

“A member of a board of township trustees may lawfully be employed by a school district as a school bus driver.”

I see no reason to deviate from the holding in this opinion.

As to your second question, we may look initially to Section 5915.11, Revised Code, which states :

“Each political subdivision may make appropriations for the payment of the expenses of its local organization for civil defense and for the payment of the expenses chargeable to such political subdivision by agreement or under regulations promulgated by the governor in any county wherein a county-wide civil defense organization has been established pursuant to section 5915.07 of the Revised Code.

You have informed me that the local civil defense organization here in question was organized under Section 5915.06, Revised Code. You have further informed me that the mayor of the incorporated village took no part in the selection of the civil defense director. From this I conclude that the director here involved was appointed by the board of county commissioners as provided in Section 5915.06, *supra*.

Noting, as we have, that Section 5915.11, Revised Code, empowers each political subdivision to appropriate money for the payment of the expenses of its local organization, it follows that whatever money is made available to the civil defense organization in question will be appropriated by the board of county commissioners. To assist this board, as the authority of the county in estimating the budgetary requirements necessary for civil defense, the director would undoubtedly be required to file an estimate as provided for in Section 5705.28, Revised Code.

In like manner, the village would also prepare a budget to be approved by the county budget commission as provided in Section 5705.27, *et seq.*, Revised Code. The authority of the budget commission to act on such proposed budgets is set out in Section 5705.32, Revised Code, which reads in part as follows :

“The county budget commission shall adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, so as to bring the tax levies required therefore within the limitations specified in sections 5705.01 to 5705.47, inclusive, of the Revised Code, for such levies, but no levy shall be reduced below a minimum fixed by law. The commission shall have authority to revise and adjust the estimate of

balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom.

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Should the budget commission be inclined to make certain adjustments in the village budget, as provided in this section, it is impossible to suppose that the village mayor would not be keenly interested in the matter. Accordingly, should a reduction be contemplated by the commission, it could well be that the mayor would wish to appear before the commission to defend the estimates submitted. In this situation it is apparent that the same person will have an interest in the budget of the village on the one hand and in the appropriation for the local civil defense organization on the other. Even though the civil defense director has no authorization to appear before the budget commission to defend his budget, the mere fact that his appropriation will come, if at all, from a subdivision which may well be competing for funds with the village which this same person serves as mayor, makes the two offices clearly inconsistent and repugnant and therefore incompatible.

The next question for consideration is whether the position of school bus driver is incompatible with either the office of mayor of a village or the office of county civil defense director. Since there is no express prohibition to be found in the constitution or the statutes, it is necessary to apply the common law test of compatibility which is well stated in the case of *State ex rel. v. Gebert*, 12 C.C. (N.S.), 274:

“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 the tests set out above, I find no reason why a school bus driver may not at the same time hold the office of mayor or civil defense director, subject of course to the limitation that it must be physically possible for him to perform the duties of both positions. In Opinion No. 934, Opinions of the Attorney General for 1929, p. 1441, one of my predecessors in office held that a school teacher could legally fill the position of mayor. The opinion read in part:

“A teacher employed by a township board of education may legally fill the position of mayor of a village, unless his duties as teacher make it physically impossible for him to perform the duties of both positions.”

This reasoning seems equally applicable to the position of school bus driver whether coupled with the office of mayor or county civil defense director.

Accordingly, it is my opinion and you are advised :

1. The office of township trustee is compatible with the position of school bus driver.
2. The office of mayor of a village is incompatible with that of county civil defense director appointed pursuant to Section 5915.06, Revised Code.
3. A village mayor may legally hold the position of school bus driver, unless his duties as bus driver make it physically impossible for him to perform the duties of both positions.
4. A county civil defense director may be employed as a school bus driver, subject to the proviso that it is physically possible to perform the duties of both positions.

Respectfully,  
WILLIAM SAXBE  
Attorney General