

4744.

APPROVAL, BONDS OF TIPPECANOE CITY VILLAGE
SCHOOL DISTRICT, MIAMI COUNTY, OHIO, \$4,300.00.

COLUMBUS, OHIO, October 1, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4745.

APPROVAL, BONDS OF COLUMBIANA VILLAGE SCHOOL
DISTRICT, COLUMBIANA COUNTY, OHIO, \$18,500.00.

COLUMBUS, OHIO, October 1, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4746.

DISAPPROVAL, BONDS OF DAYTON CITY SCHOOL DIS-
TRICT, MONTGOMERY COUNTY, OHIO, \$195,000.00.

COLUMBUS, OHIO, October 1, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :—

RE: Bonds of Dayton City School District, Montgomery
County, Ohio, \$195,000.00.

You have submitted to me your purchase resolution covering the above
bonds and the transcript of the proceedings relating thereto.

The transcript shows that Mrs. Edith McClure-Patterson is a member
of the board of education of this district and is also the president thereof.
Mrs. Patterson is also a duly appointed, qualified and acting member of the
Board of Liquor Control of the State of Ohio. Section 6064-5, General Code,
provides in part as follows:

“* * Each member of the board of liquor control shall devote his entire time to the duties of his office and shall hold no other position of trust or profit.”

This statute therefore expressly prohibits dual office holding by a member of the Board of Liquor Control and has thus made the holding of the office of such a member incompatible with that of any other public office of either profit or trust. It cannot, I think, be contended that the office of member of a board of education is not a public office of trust.

The rule is well settled that where an individual is an incumbent of a public office and during such incumbency is appointed or elected to another public office and enters upon the duties of the latter office, the first office becomes vacated if there is incompatibility between the offices by reason of constitutional or statutory provision or by reason of the fact that the duties of said offices are incompatible. In 46 C. J. 947, the following is stated :

“The acceptance of an incompatible office by the incumbent of another office is regarded as a resignation or vacation of the first office.”

See also 22 R. C. L. 418; *State vs. Mason*, 61 O. S. 515; *State, ex rel. vs. Gibbons*, 40 O. L. R. 285; and *State, ex rel. vs. McMillen*, 15 C. C. 163.

The legislation providing for the above bond issue received the majority vote of the members without the necessity of counting the vote of Mrs. Patterson. However, Section 2293-8, General Code, provides that the bonds must be signed by the president and clerk of the board of education. Since the acceptance by Mrs. Patterson of the office of member of the Board of Liquor Control must be held to constitute a resignation or abandonment of the office of member of the board of education, she must also be held to have resigned or abandoned the office of president of the board of education and consequently would have no authority to sign the bonds in question.

It is my advice, therefore, that you do not purchase such bonds so long as she assumes to act as president of the board. For the above reasons, I am not passing upon the regularity in other respects of the proceedings relating to this bond issue.

Respectfully,

JOHN W. BRICKER,

Attorney General.