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EDUCATION, MEMBER OF CITY BOARD—COUNTY COMMISSIONER—OFFICES IN SAME COUNTY—INCOMPATIBLE—MAY NOT BE HELD AT SAME TIME BY SAME PERSON.

SYLLABUS:

The offices of member of a city board of education and county commissioner in the same county are incompatible, and may not be held at the same time by the same person.

Columbus, Ohio, February 7, 1945

Hon. Joel S. Rhinefort, Prosecuting Attorney
Toledo, Ohio

Dear Sir:

This will acknowledge receipt of your letter of recent date inquiring if a member of the Toledo city board of education may also hold the office of county commissioner of your county. Your letter reads as follows:

“A recently elected and qualified member of the county commissioners prior to his election and at this time is a duly elected and qualified member of the Board of Education of the city of Toledo, a city of the first class.

The question that I request to be answered is: Can the same man hold both of said offices at the same time or are they incompatible? I am familiar with the opinion of the Attorney General 1928, page 2777, Vol. IV, No. 2975.

May I have your opinion as soon as convenient?”

In the 1928 opinion of the Attorney General referred to in your letter, and also in opinion No. 4885 reported in Opinions of the Attorney General for 1932, page 1528, it was held that the office of county commissioner and member of a rural board of education are incompatible, and may not be held at the same time by the same person. The question was again considered by my immediate predecessor in 1940, and in an opinion reported in the Opinions of the Attorney General for that year, No. 3088, page 1036, the former opinions were approved and followed.

The three opinions referred to were based upon the provisions of Section 5625-1, et seq., General Code, commonly referred to as the budget law, and while the office of member of a rural district board of education was involved, rather than that of member of a city district board, the reasons stated in the opinions in support of the conclusions reached are equally applicable to the case presented in your letter, because a city board of education, the same as a rural or local board of education, is a "taxing authority" under the budget law, and all that was said with respect to a rural board of education and the board of county commissioners may be adapted to your case. In other words, it is the duty of the city board of education and the board of county commissioners to adopt and submit to the county auditor each year a tax budget for the ensuing fiscal year. The county auditor lays these budgets before the county budget commission, whose duty it is to so adjust the estimated amounts required from the general property tax for each fund as shown by the several budgets of all the subdivisions within the county, as to bring the tax levies required therefor within the limitations fixed by law. In making such adjustment it frequently happens that members of the taxing authorities of the several subdivisions in the county appear before the budget commission to represent the interests of their respective subdivisions, and oftentimes to urge the making of adjustments for their benefit in such a manner as to be detrimental to the interests of the other subdivisions. In such cases the members of the several taxing authorities frequently find themselves in the position of adversaries. The possibility of such a situation arising and existing renders the office of member of one taxing authority incompatible with that of membership on another taxing authority in the same county.

There has been no change in the status of county commissioners or members of boards of education so far as their relation with the county budget commission or the budget law is concerned, since the rendition of the opinions above referred to.

You are therefore advised that the offices of member of the Toledo city board of education and county commissioner of your county are incompatible, and may not be held at the same time by the same person.

Respectfully,

HUGH S. JENKINS
Attorney General