

recover the compensation provided by law for each office. In the eyes of the law the same individual is two distinct officers and for this reason entitled to the compensation incident to each office."

The positions under consideration are, as they relate each to the other in so far as the duties to be performed by the incumbents are concerned, entirely independent of each other. The holder of one of the positions would not be required to perform any of the duties of any of the other positions unless he had been appointed thereto. In such cases it has been held in *State ex rel. Harrison vs. Lewis*, 10 O. D., 537, that:

"The provisions of Section 20, Article 2, of the Constitution, that the salary of a county official cannot be increased during his term of office, apply only to compensation for duties germane to his office or incidental or collateral thereto, and do not apply to services rendered in an independent employment to which he is appointed by an act of the state legislature."

See also *State ex rel. Taylor vs. Caughlin*, 18 O. D., 289.

To the same effect is the case of *State ex rel. Wolfe vs. Shaffer*, supra, which case was affirmed by the Circuit Court without report.

The opinion of the Attorney General of 1921 to which I have heretofore referred, provides in the syllabus that:

"The office and duties of a criminal court bailiff and those of a court constable are not incompatible and the same person may be appointed to discharge the duties of both offices, by the judge or judges of the common pleas court in counties having less than four judges, and may receive the salary for both positions, provided, however, that he is not paid twice for the same service."

The principle is recognized by the Supreme Court of the United States in the case of *United States vs. Saunders*, 120 U. S. 126, wherein it was held that the act of Congress prohibiting the allowance of additional pay or extra compensation to public officers has no application to the case of two distinct offices, places or employments each of which has its own duties and compensation, which offices may both be held by one person at the same time.

I am therefore of the opinion that a person acting under appointment as court bailiff may be appointed deputy sheriff or county probation officer, or both, and that he may be paid the compensation fixed for each one of the positions, provided it is physically possible for him efficiently to perform the services necessary to fill the positions.

Respectfully,
EDWARD C. TURNER,
Attorney General.

690.

BOARD OF EDUCATION—WITHOUT AUTHORITY TO PAY PHYSICIANS FOR TREATING PUPILS INJURED WHILE BEING TRANSPORTED TO AND FROM SCHOOL IN SCHOOL BUS.

SYLLABUS:

Boards of education are without authority to pay from public funds the expense of

employing physicians for treating pupils who have been injured while being transported to and from school in conveyances operated under the direction of the board.

COLUMBUS, OHIO, July 6, 1927.

HON. EUGENE S. OWEN, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—I have before me your communication reading as follows:

“In the Galena School District, in Delaware County, Ohio, the Board of Education hired a certain party to haul a few of the pupils to and from school, by the month.

The party hired employed another person to transport the pupils for one day, and a small child, about 6 or 7 years of age, through the carelessness of the driver, fell off and was hurt. The parents of the child employed a couple of Doctors to treat the child for the injuries, and the Doctors have now presented their bills to the Board of Education for payment.

I have advised the Board of Education that there is no liability on the part of the Board to pay the Doctor bills, and further that there is no authority of law by which they could safely pay the bills, and they have not paid them. They have asked me to write you for your opinion in the matter. The Board did not even know that the children were being transported by anyone but the one they hired.

Will you please give me your written opinion just as soon as it is possible for you to do so, and oblige?”

It is a well settled rule of law that under no circumstances can boards created by statute expend public moneys under their control unless the power to do so has been expressly conferred upon them, or unless the power may be implied as an incident to the carrying out of powers expressly granted. This principle as it applies to boards of education has been recognized by many authorities.

Boards of education in the conduct of school affairs act in a governmental capacity and as such governmental agencies can not be held to respond in damages for either misfeasance or malfeasance. This rule is well settled by the case of *McHenry vs. Board of Education*, 106 O. S. 357, and cases therein cited.

Inasmuch as there is no liability on the part of the board for injuries received by one of the pupils under circumstances such as you have related, there is no duty on their part to respond in damages therefor, and consequently they could have no implied power to pay any part of the damages resulting from the accident.

The principle has been well stated by the Supreme Court as it applies to county commissioners in the case of *Jones, Auditor, vs. Commissioners of Lucas County*, 57 O. S. 189, which case has been cited with approval and its principles followed in many later decisions. In my opinion the principle is applicable to boards of education as well as boards of county commissioners. The first branch of the syllabus of the Lucas County case reads as follows:

“The board of county commissioners represents the county, in respect to its financial affairs, only so far as authority is given to it by statute. It may pass upon and adjudicate claims against the county for services in a matter, which, under the statutes, may be the subject of a legal claim against the county. But it is without jurisdiction to entertain or adjudicate claims which in themselves are wholly illegal and of such a nature as not to form the subject of a valid claim for any amount, and an attempt by the board to allow a claim of such character will not bind the county.”

In the course of the opinion the court said:

"Giving this construction to the statutes, we conclude that the board, being a creature of statute, an agent whose powers are not general, but special, should be held to represent the county in respect to its financial affairs, only in such matters as are distinctly provided by statute. Authority is thus given to it to entertain and pass upon claims, which for some amount, may be the subject of legal demand against the county. Its jurisdiction being thus necessarily limited, is not of such a character as to permit a finding of jurisdiction by the board to be conclusive of the fact. Speaking more specifically, the board may properly pass upon a question whether in fact a given service has been rendered, and upon the amount which ought to be paid upon an unliquidated claim, where in law a claim may exist, i. e., where it has a legal basis on which to stand. But it is wholly without authority to sanctify a demand illegal because of being upon a subject which can admit of no claim, and thus give away the people's money. It can no more do so than can any other agent bind his principal by acts unauthorized because without the scope of his authority."

There can be no question but that your advice to the board with reference to this matter was correct and should be followed by the board. For a board of education to pay a doctor bill, or any part of the expenses incident to an accident occurring in the transportation of pupils under the supervision of the board, would be an unauthorized diversion of public funds.

Respectfully,
EDWARD C. TURNER,
Attorney General.

691.

SCHOOLS—INCORPORATION OF NEW VILLAGE FROM RURAL SCHOOL DISTRICT—CREATES SEPARATE SCHOOL DISTRICT—ELECTION OR APPOINTMENT OF BOARD OF EDUCATION—TERRITORY REMAINING IN RURAL DISTRICT—INDEBTEDNESS OF DISTRICTS.

SYLLABUS:

1. *Upon the incorporation of a new village from territory lying within the territorial boundaries of a rural school district, the territory within the new village thereby becomes a separate village school district if the tax valuation of the property lying within such territory is \$500,000.00 or more.*

2. *When a new village is incorporated and a new village school district thereby automatically created, a board of education shall be elected therefor at the time when the first election is held for the election of municipal officers for the village, which may be at the next regular time for municipal elections or at a special election held at any time not exceeding six months after the incorporation. If the village school district fails to elect a board of education at the time municipal officers are elected, the county commissioners of the county in which such district is situate should appoint such board, the members of which shall serve until their successors are elected and qualified.*

3. *When the territory remaining in a rural school district, after the incorporation of a village consisting of territory which was formerly contained in the rural school district,*