

is required of those persons who actually peddle their stock in trade and is not required of those persons who have a financial interest in the peddling of merchandise but who do not actively peddle such merchandise.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4284.

OFFICES INCOMPATIBLE—TOWNSHIP TRUSTEE AND MEMBERS BOARD OF GENERAL HEALTH DISTRICT—(O.A.G. 1930, VOL. III, P. 1718), APPROVED.

SYLLABUS:

The offices of township trustee and member of the board of a general health district are incompatible. (Opinions of the Attorney General for 1930, Vol. III, page 1718, approved and followed.)

COLUMBUS, OHIO, May 24, 1935.

HON. CLIFTON L. CARYL, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“This office desires an informal opinion upon the following:

Whether or not a member of the Board of Township Trustees may legally serve as a member of the District Board of Health?

On the 6th day of May, which was the regular time for the election of members to the health board, a member of the board of township trustees in Union County was duly elected to fill the vacancy, a result of which has caused serious objection on the part of said board of health as to whether or not such member of the board of township trustees may legally qualify.

Your predecessor in office in 1930 rendered an opinion that a member of the board of township trustees was prohibited from serving on the district board of health, however, from a careful reading of that opinion I am inclined to believe that it is not well founded, and should not apply in this matter.”

The statutes relative to your question do not specifically preclude one and the same person from holding the offices in question simultaneously. However, it is necessary to determine whether or not these offices are incompatible by reason of the common rule of incompatibility. A good definition of the common law test of incompatibility is to be found in 46 Corpus Juris, pages 941 and 942 as follows:

“At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But where the

functions of two offices are inconsistent, they are regarded as incompatible."

As stated in your letter the exact question propounded by you was answered in an opinion to be found in Opinions of the Attorney General for 1930, Vol. III, page 1718. The first branch of the syllabus of that opinion reads as follows:

"1. The offices of township trustee and member of the board of general health district are incompatible."

The above opinion was largely based upon two reasons. The first objection was to be found in the provisions of the so-called Budget Law. From the opinion at page 1719 I quote the following passage:

"Under the provisions of the new budget law, passed in 1927 and amended in part, in 1929 (Sections 8625-1, et seq.), a general health district is a district authority, receiving its funds from two subdivisions. See G. C. 5625-1 (j). Section 5625-5, General Code, makes provisions for a general levy for current expenses to be made by the taxing authority of each subdivision yearly. By force of Section 5625-1 (c), General Code, the township trustees are the taxing authority of a township. Furthermore said Section 5625-5 provides in part that 'Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts certified to be necessary * * * for boards and commissioners of health * * *'.

Obviously the township trustees are required to include the township's share of the general health district expenses in the general levy, and this amount is the amount apportioned by the county auditor under Section 1261-40, General Code.

Therefore it is apparent that if a township trustee were also a member of the board of a general health district, he would have to prepare budget items to submit to the county auditor and budget commission, and then later include portions of the amount of said items in the general levy for current expenses of his township. There might be a tendency for said township trustee acting as health board member, to make the amount of the request for funds less than they ordinarily should be, so that his township would not have to have apportioned to it as large an amount to levy for health district expenses."

The second legal objection propounded in the above opinion was raised by the provisions of Section 1261-41, General Code, which reads in part as follows:

"In case of epidemic or threatened epidemic or during the unusual prevalence of a dangerous communicable disease, if the moneys in the district health fund of a general health district are not sufficient, in the judgement of the board of health of such district, to defray the expenses necessary to prevent the spread of such disease, such board of health shall estimate the amount required for such purpose and apportion it among the townships and municipalities in which the condition herein described exists, on the basis provided for in section 25 of this act. Such estimate and apportionment shall be certified to the county auditor of the proper county or counties, who shall draw an order on the clerk, auditor or other similar officer of each township or municipality affected thereby, for the amount to it apportioned. * * *."

It was pointed out in the 1930 opinion, *supra*, that in case of epidemic the district health board must apportion the expenses necessary to combat such epidemic among the townships and villages that comprise such health district, if the district health fund is depleted. Consequently there might be a tendency for the township trustee member of the health district board to see that a lesser amount than that which would be reasonable is apportioned to his township. It is true that these two objections might not actually exist since there is a strong presumption that a public official will honestly and fairly administer his public duties. However, the state and its political subdivisions are jealous mistresses and often require much more from their officials than private industries seek from their officials. This office has in numerous opinions followed that early English case of *Rex vs. Tizzard*, 9 B. & C. 418, wherein that famous jurist, Bailey, J. in speaking of incompatibility of offices said:

"I think that the two offices are incompatible when the holder cannot in every instance discharge the duty of each."

The sections of the General Code upon which the 1930 opinion was based have not been amended so far as the present question is concerned. I agree with the conclusion reached in the 1930 opinion and in the reasoning upon which the opinion was based.

Without further extending this discussion it is my opinion in specific answer to your question that the offices of township trustee and member of the board of a general health district are incompatible. Opinions of the Attorney General for 1930, Vol. III, page 1718, approved and followed.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4285.

APPROVAL, BONDS OF CITY OF DAYTON, MONTGOMERY COUNTY, OHIO,
\$102,000.00.

COLUMBUS, OHIO, May 24, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4286.

APPROVAL, CONTRACT FOR ARCHITECTURAL SERVICES IN CONNECTION WITH ERECTION OF COTTAGE FOR MASSILLON STATE HOSPITAL, MASSILLON, OHIO, AND FOR COMPENSATION FOR SAME—JOSEPH L. WEINBERG, CLEVELAND, OHIO.

COLUMBUS, OHIO, May 24, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a contract be-