

3017.

OFFICES COMPATIBLE—PERSON EMPLOYED TO TRANSPORT PUPILS TO AND FROM RURAL SCHOOL AND JANITOR OF SCHOOL BUILDING.

SYLLABUS:

If it is physically possible to perform the duties of both positions, a person who is under contract with a rural board of education to transport pupils to and from school may also be hired by the same rural board of education as janitor of the school building to which such children are transported and a separate salary may be paid to such person for each position.

COLUMBUS, OHIO, August 10, 1934.

HON. RAY W. DAVIS, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

“Upon the request of the President of the Board of Education of Salt Creek Township, Pickaway County, Ohio, I would like to make the following inquiry for your opinion:

May one who has been and is now under contract with the Board of Education to transport pupils to and from a Centralized School Building, by means of Auto Truck, also be hired by the same Board of Education as janitor of the school building to which such children are transported, with a salary attached to each position?”

Sections 7731-3 and 7690, General Code, read as follows:

Sec. 7731-3. “When transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least eighteen years of age and is of good moral character and is qualified for such position. Provided, however, that a county board of education may grant such certificate to a boy who is at least sixteen years of age and who is attending high school. Any certificate may be revoked by the authority granting same on proof that the holder thereof has been guilty of improper conduct or of neglect of duty and the said driver’s contract shall be thereby terminated and rendered null and void.”

Sec. 7690. “Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries. * * *”

Public offices are said to be incompatible when they are made so by statute

or when by reason of the common law rule of incompatibility they are rendered so. An examination of the above sections discloses that there is no statutory inhibition, and therefore it must be considered whether or not there is anything to prevent one person from holding the two positions in question at the same time by reason of the duties thereof being inconsistent or conflicting in any manner. The rule of incompatibility is stated in the case of *State, ex rel. Attorney General vs. Frank Gebert*, 12 O. C. C. (N. S.) 274, as follows:

“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 above principle, it would therefore seem to me that there is no reason why a rural board of education, if it sees fit to do so, may not employ a person as janitor of the school building who it at the same time under contract with said rural board of education to transport pupils to and from said school. There is nothing incompatible in the duties which said person would have to perform in both capacities, and whether or not it is physically possible for the same person to satisfactorily perform the duties of both positions is a question of fact rather than of law and consequently a matter for the board of education to determine.

I am therefore of the opinion that if it is physically possible to perform the duties of both positions, a person who is under contract with a rural board of education to transport pupils to and from school may also be hired by the same rural board of education as janitor of the school building to which such children are transported and a separate salary may be paid to such person for each position.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3018.

REMONSTRANCE--NOT VALID UNLESS FILED WITHIN THIRTY DAY PERIOD WITH COUNTY BOARD OF EDUCATION IN TRANSFER OF SCHOOL PROPERTY--SEC. 4692, GENERAL CODE.

SYLLABUS:

When a transfer of school territory is made by a county board of education by authority of Section 4692, General Code, a remonstrance delivered to the president of the board of education at his residence, within the thirty day period spoken of in the statute and retained by him until after the expiration of the said thirty day period before delivering the same to the office of the county superintendent of schools, is not "filing with the county board of education" as required by the statute within the thirty day period so as to defeat the taking effect of the transfer as made.