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INCOMPATIBLE OFFICE—TOWNSHIP TRUSTEE—MEMBER
OF TOWNSHIP MEMORIAL BOARD OF TRUSTEES CREATED
BY SECTION 3061 G. C.—MAY NOT BE HELD BY SAME PER-
SON AT SAME TIME.

SYLLABUS:

The office of member of a township memorial board of trustees created by Section 3061, General Code, and the office of township trustee, are incompatible, and may not be held at the same time by the same person.

Columbus, Ohio, January 23, 1947

Hon. Ralph J. Bartlett, Prosecuting Attorney, Franklin County
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your letter in which you state that a vacancy exists in the board of township trustees of one of your townships, and that the justice of the peace who has the power of appointment desires to fill the vacancy by appointing thereto a member of the township memorial board of trustees, and you request my opinion on the question

whether or not the office of township trustee and member of the township memorial board are compatible, and may be held at the same time by the same person.

As indicated in your letter, Section 3061, General Code, provides that the members of a township memorial board of trustees shall be appointed by the township trustees, and in addition to this, Section 3063, General Code, provides that vacancies in the memorial board also shall be filled by the township trustees.

While the specific question you have submitted is by its terms confined to the subject of compatibility, the power of township trustees to appoint one of their own number as a member of the township memorial board is at least indirectly involved, because, as I see it, if the justice of the peace may appoint a member of the memorial board to fill a vacancy in the office of township trustee, and such appointee be allowed to hold both offices at the same time, it might also be legal for the township trustees in the first instance to appoint one or more of their number to the memorial board.

The rule appears to be that it is contrary to public policy for an officer clothed with the power of appointment, to appoint himself to office, and also that such result cannot be accomplished indirectly. I quote the following from 46 Corpus Juris, page 940, §43.

“It is contrary to the policy of the law for an officer to use his official appointing power to place himself in office, so that even in the absence of a statutory inhibition, all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint; nor can the appointing board appoint one of its members to an office, even though his vote is not essential to a majority in favor of his appointment, and although he was not present when the appointment was made, and notwithstanding his term in the appointing body was about to expire; nor can the result be accomplished indirectly by his resignation with the intention that his successor shall cast his vote for him.”

The cases of *State, ex rel. v. Taylor*, 12 O. S., 310, and *State, ex rel. v. Newark*, 6 N. P., 523, are to the same effect. In both cases the court endorsed the proposition that the word “appoint,” when used in connection with an office, implies the conferring of authority upon another, and not as conferring power upon the appointing authority to appoint one or more of their own number to the office.

The recent act providing for the establishment and management of memorials to commemorate the services of members and veterans of the armed forces in the United States, passed by the 96th General Assembly, and codified as Section 3059 et seq., General Code, in my opinion not only contemplates that the membership of a township memorial board of trustees shall be composed of persons other than township trustees, but also discloses that the offices of township trustee and member of the township memorial board are incompatible. This incompatibility, in my opinion, appears from the pertinent provisions of the following sections of the act:

Section 3061: "The taxing authority of the township * * * shall appoint a board of trustees consisting of eleven members. * * *"

Section 3063: "Vacancies in the office of trustee shall be filled in the same manner as the original appointment."

Section 3060-2: "The taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the ten mill limitation, during the period or periods and for the purpose or purposes stated in the resolution or at any less rate or for any of said years or purposes."

Section 3064-1: "Before making any expenditures, the trustees shall give bond to the state of Ohio in such sum as the authority making the appointment shall fix and to the approval of such authority."

Section 3064-2: "Before acquiring any site or making any contract for construction of a memorial, the board of trustees shall secure from the taxing authority of the appointing subdivision, approval of the site and design of the memorial."

In view of the fact that the township trustees appoint the members of the memorial board and also fill vacancies therein, and the authority conferred upon the township trustees with respect to tax rates and levies, to the fixing of the amount and the approval of the surety bonds to be given by the members of the memorial board, and to the approval of the site and design of the memorial before a site may be acquired or construction contract made, it seems to me that the conclusion is justified that the office of township trustee and member of the township memorial board of trustees are incompatible, under the recognized tests referred to in 32 O. Jur., page 908, §48, viz.:

“One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other * * *, or is in any way a check upon the other, or where a contrariety and antagonism would result in an attempt by one person to discharge the duties of both.”

You are therefore advised that the office of member of a township memorial board of trustees created by Section 3061, General Code, and the office of township trustee, are incompatible, and may not be held at the same time by the same person.

Respectfully,

HUGH S. JENKINS,
Attorney General.