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COMPATIBILITY—MAYOR OF VILLAGE AND MEMBER OF  
SCHOOL BOARD ARE COMPATIBLE.

## SYLLABUS:

A person may at the same time serve as member of a school board and as mayor of a village encompassing the school district of such board.

Columbus, Ohio, August 24, 1959

Hon. John G. Peterson, Prosecuting Attorney  
Greene County, Xenia, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“We have a request for an opinion from your office from the  
Greeneview Board of Education of this county. The exact ques-

tion is as follows: Can an individual serve as a member of a school board and at the same time serve as mayor of his village, both village and school being in the same district and county?

"I am of the opinion that the same would be incompatible but am unable to find an exact answer to the question. \* \* \*"

Three of my predecessors who had been asked to resolve the same question came to the same conclusion—that the office of the mayor of a village and that of a member of a village board of education are compatible and may be held by a person at the same time. Opinion No. 465, Opinions of the Attorney General for 1913, page 1372; Opinion No. 1321, Opinions of the Attorney General for 1918, page 924; Opinion No. 2153, Opinions of the Attorney General for 1934, page 21.

I have examined the foregoing opinions, the citations of authorities and statutes applicable to the situation involved, and find myself in full accord with the conclusions the former Attorneys General had reached. In view of the fact, however, that twenty-five years have passed since the rendering of the last named opinion, I am alerted to the probability that statutory changes may have been wrought by the General Assembly in the meantime so as to require a different answer. The need of precautionary investigation with regard to such probability is also indicated in the following statement in Opinion of the Attorney General for 1934, *supra*, at page 23:

"This office has in numerous opinions declared that certain offices are incompatible because of the provisions of the so-called budget law (Sections 5625-1, *et seq.*, G. C.). Thus the same person cannot at the same time hold the positions of member of a rural board of education and that of county commissioner, since both of these subdivisions are taxing subdivisions and such person might be compelled to be present before the budget commission representing contrary interests. While the 1913 and 1918 opinions, if sound, are dispositive of your present inquiry, nevertheless these opinions did not discuss the provisions of the budget law and it might be well to discuss the question of whether or not there is any incompatibility upon that ground. \* \* \*"

Thereupon, the opinion under discussion cites Section 5625-1, General Code, wherein the council or other legislative authority is designated as the fiscal agent of a municipal corporation, and Section 4259, General Code, in which the duties of mayor of a village with regard to finances are outlined; and by comparing their respective provisions the conclusion is

reached that, since a village mayor apparently does not appear before the budget commission, the two positions are not incompatible. As to the last named statutory section, which is now Section 733.32, Revised Code, I find that its provisions are now substantially the same as they were in 1934. On the other hand, while examining the pertinent sections of the Budget Law, now Section 5705.27, *et seq.*, Revised Code, my attention was drawn to Section 5705.32, Revised Code, formerly Section 5625-24, General Code, to which a new paragraph has been added by the 98th General Assembly, 1949 Ohio Laws 363, reading as follows :

“\* \* \*

“Before the final determination of the amount to be allotted to each subdivision from any source, the commission shall permit *representatives* of each subdivision and each board of public library trustees to appear before it to explain its financial needs.

“\* \* \*

(Emphasis added)

As already mentioned, the fiscal officer in case of a village under Section 5705.01, Revised Code, is the village clerk. The same section also designates the clerk of the board of education as the fiscal agent for a school district. Normally, I should think, fiscal agents of a given taxing authority would be expected to appear before the budget commission in behalf of the claims of their respective subdivisions. Does the use of the generic term “representatives” used in Section 5705.32, Revised Code, whereby the door is apparently being opened to spokesmen other than fiscal agents of such taxing authorities, create a possibility of conflict of interest in the sense considered as determinative in weighing the pros and cons of compatibility of two public offices?

I believe that in the light of the well settled rule that regularity of procedure will be presumed in the absence of evidence to the contrary, such doubt as there may be should be resolved in favor of such presumption. While it is true that apparently a person simultaneously holding the position of village mayor and of that of a member of a board of education in the same district and county would, as such, have the right to appear before the county budget commission in either capacity, it is to be borne in mind that such a situation may be distinguished from one where officials of equal status, for example, members of a board of township trustees, are involved, and any of them may represent the particular subdivision in a situation pregnant with possible conflict; in the latter case, a situation can

arise in which an official, *by reason of his status*, would be under the obligation to appear before the budget commission, while here, the status of either position *cannot impose such an obligation*, under any circumstances.

In 32 Ohio Jurisprudence, page 908, it is stated:

“\* \* \* 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.”

The physical impossibility of a person to perform the duties of two offices at the same time, mentioned in *State, ex rel. v. Gebert*, 12 O.C.C. (N.S.), 274, 275, as another ground of incompatibility of two offices, apparently is not a circumstance that needs to be considered in connection with the situation at hand.

Accordingly, I am of the opinion and you are advised that a person may at the same time serve as member of a school board and as mayor of a village encompassing the school district of such board.

Respectfully,

MARK McELROY

Attorney General