

OPINION NO. 66-135

Syllabus:

The county superintendent of schools may be appointed superintendent of a joint vocational school district, even though the county board of education is not, also, serving as the joint vocational school board, provided it is physically possible for one person to perform the duties of both offices.

To: Marshall E. Peterson, Greene County Pros. Atty., Xenia, Ohio
By: William B. Saxbe, Attorney General, August 12, 1966

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

"'Can the superintendent of Greene County Schools serve in the joint capacity as administrator of Greene County Schools and in addition serve as superintendent for the Greene Vocational Board of Education?' The law seems quite clear that this can be done if the Board of Education serves in a joint capacity for the county schools as well as the Greene Joint Vocational School. In our particular case, we have two separate boards of education."

Your question calls for an interpretation of Section 3311.19, Revised Code, which provides:

"The management and control of a joint vocational school district shall be vested in the joint vocational school district board of education.

"Where a joint vocational school district is composed only of two or more local school districts located in one county, or when all the participating districts are in one county and the boards of such participating districts so choose, the county board of education of the county in which the joint vocational school district is located shall serve as the joint vocational school district board of education. Where a joint vocational school district is composed of local school districts of more than one county, or of any combination of county, local, city, or exempted village school districts, unless administration by the county board of education has been chosen by all the participating districts in one county pursuant to this section, then the board of education of the joint vocational school district shall be composed of one or more persons who are members of the boards of education from each of the city, exempted village, or county school districts affected to be appointed by the boards of education of such school districts. In such joint vocational school districts the number and terms of members of the joint vocational school district board of education and the allocation of a given number of members to each of the city, exempted village, and county districts shall be determined in the plan for such district, provided that each such joint vocational school district board of education shall be composed of an odd number of members.

"The vocational schools in such joint vocational school district shall be available to all youth of school age within the joint vocational

school district subject to the rules and regulations adopted by the joint vocational school district board of education in regard to the standards requisite to admission. A joint vocational school district board of education shall have the same powers, duties, and authority for the management and operation of such joint vocational school district as is granted by law to a board of education of a city school district, and shall be subject to all the provisions of law that apply to a city school district.

"Where a county board of education serves as the joint vocational school district board of education the county superintendent of schools shall be the executive officer for the joint vocational school district and the board may provide for additional compensation to be paid to him by the joint vocational school district but he shall have no continuing tenure other than that of county superintendent. The superintendent of schools of a joint vocational school district shall exercise the duties and authority vested by law in a superintendent of schools pertaining to the operation of a school district and the employment and supervision of its personnel. The joint vocational school district board of education shall appoint a clerk of the joint vocational school district who shall be the fiscal officer for such district and shall have all the powers, duties, and authority vested by law in a clerk of a board of education.

"Where a county board of education serves as the joint vocational school district board of education such board may appoint the county superintendent of schools as the clerk of the joint vocational school district.

"* * * * *"

The first question is whether the statute expressly or implicitly forbids one person from serving in both the capacities outlined in your request. The history of Section 3311.19, supra, can be helpful in interpreting the statute. In 1961, when the present section number was first assigned to the subject of a joint vocational school district board, a joint vocational school district existing entirely within a single county was contemplated. That statute provided that the county superintendent of schools be the executive officer for the joint vocational school district and, in addition, that he might also be clerk to the joint vocational school district board of education.

In 1963, the Legislature amended Section 3311.19, supra, to read the same as the present section, without the existing last paragraph. The purpose of the amendment was to provide for a joint vocational school district composed of more than one county, local, city, or exempted village school district. The language concerning executive officer and clerk to the joint vocational school district was retained, as part of the paragraphs specifically relating to the case in which the county

board of education serves as the joint vocational school district board of education. The express mention of the case in which both boards are the same might seem to indicate that one man cannot serve in both capacities where the boards are composed of different persons.

However, in light of the history of Section 3311.19, supra, the omission of any expression as to one person serving in executive capacity for a county school district and a joint vocational school district, when such districts have their own separate and distinct boards of education, cannot evidence a legislative intent that one person cannot thus serve.

Your question then becomes one of compatibility. The common law test of compatibility is stated in State ex rel. Attorney General v. Gebert, 12 C.C. (N.S.) 274 (1909) at 275:

"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."

Neither the county board of education nor the joint vocational board of education is subordinate to the other. See Chapter 3311., Revised Code. Since the powers of the superintendents derive from their boards of education, neither the superintendent of a county school district nor the superintendent of a joint vocational school district is subordinate to the other.

The question then becomes whether it is physically possible for one man to carry out the duties of both offices. This is a matter of fact and must be judged on each unique set of circumstances.

Accordingly, it is my opinion and you are advised that the county superintendent of schools may be appointed superintendent of a joint vocational school district, even though the county board of education is not, also, serving as the joint vocational school board, provided it is physically possible for one person to perform the duties of both offices.