

2289.

OFFICES COMPATIBLE—ASSISTANT UNITED STATES DISTRICT ATTORNEY AND MEMBER OF CITY BOARD OF EDUCATION—DIRECTOR OF PUBLIC WELFARE OF CITY OF TOLEDO AND MEMBER OF CITY BOARD OF EDUCATION.

*SYLLABUS:*

1. *In the absence of a federal order to the contrary, an assistant United States district attorney may at the same time hold the office of member of a board of education of a city school district if it is physically possible to perform the duties of both positions.*

2. *The Director of Public Welfare of the City of Toledo may at the same time hold the office of member of a board of education of a city school district if it is physically possible to perform the duties of both positions.*

COLUMBUS, OHIO, February 16, 1934.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

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

“We are enclosing herewith a letter from the clerk-treasurer of the board of education of the Toledo City School District in which your opinion is requested as to the compatibility of the offices of Assistant United States Attorney for the Northern District of Ohio, and Welfare Director of the City of Toledo, with the office of member of the board of education of the Toledo City School District.

In connection with the inquiry there is enclosed a copy of the charter of the City of Toledo.”

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 incompatible. The best definition of the common law rule of incompatibility to be found in Ohio is the one stated by the court in the case of *State, ex rel., vs. Gebert*, 12 O. C. C. (N. S.) 274 at page 275, 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.”

Your first question relates to the authority of an assistant United States district attorney to hold the office of member of a board of education of a city school district. The duties of members of the city boards of education are covered by sections 4698, et seq., and sections 4745, et seq., General Code. After an examination of the duties of members of the city boards of education, I am unable to see where the duties of that office will in any way conflict, with those of an assistant United States district attorney. Whether or not it is physically possible for one person to perform the duties of both positions is, of course, a

question of fact to be determined from all the circumstances. It is possible for the head of the department under whom the federal office is held to declare that the person in question must devote his full time to the duties of his office, and thus make it impossible for such person to also be a member of a city board of education. Authority to do this would be by virtue of the executive orders issued by President Grant in January 1873, which orders are still in effect. However, I am informed that the head of the Department of Justice has not made such an order.

It is therefore my opinion, in specific answer to your first question, that in the absence of a federal order to the contrary, an assistant United States district attorney may at the same time hold the office of member of a board of education of a city school district if it is physically possible to perform the duties of both positions.

In reference to your second question, I call your attention to section 150 of the Charter of the City of Toledo, which provides for the Department of Public Welfare and enumerates the duties of the Director of such Department. This section reads as follows:

“The director of public welfare shall manage and control all charitable, correctional and reformatory institutions and agencies belonging to the city, and the use of all recreational facilities of the city, including parks, playgrounds, boulevards and public amusements. He shall have charge of the inspection and supervision of all public amusements and entertainments. He shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health, the prevention and restriction of disease, the prevention, abatement and suspension of nuisances, and the sanitary inspection and supervision of the production, transportation, storage and sale of foods and foodstuffs. He shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic he may enforce such quarantine and isolation regulations as are appropriate to the emergency. He shall have the supervision of the free employment office, and of municipal cemeteries and crematories. The commissioner of health shall be the deputy director of public welfare.”

After an examination of the duties of the Director of Public Welfare for the City of Toledo, I am unable to see where those duties would in any way conflict with those of a member of a city board of education.

It is therefore my opinion, in specific answer to your second question, that the Director of Public Welfare of the City of Toledo, may at the same time hold the office of member of a board of education of a city school district if it is physically possible to perform the duties of both positions.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*