

6. Where a board of education is unable to procure a depository for the funds of its school district in the manner provided by law, its funds should be placed in the custody of the treasurer of the city or county in which the school district is located as provided by Section 4784, General Code. Funds consisting of tax revenues distributable to a school district by the county auditor may remain in the county treasury to be drawn therefrom by the school district treasurer on the warrant of the county auditor in sums of not less than \$100.00 as provided by Section 2690, General Code.

7. Boards of education are empowered by virtue of Section 7731-5, General Code, to procure liability and property damage insurance on the school wagons or motor vans used for the transportation of the school pupils of its district and all pupils transported by means of such vehicles, whether the school district has title to those vehicles or whether the title to the vehicles is vested in some third party and the vehicles are temporarily transferred to the board of education for its use in the transportation of pupils.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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2153.

APPROVAL, NOTES OF SCOTT VILLAGE SCHOOL DISTRICT, PAULD-  
ING COUNTY, OHIO—\$1,035.00.

COLUMBUS, OHIO, January 11, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2154.

APPROVAL, NOTES OF YOUNGSTOWN CITY SCHOOL DISTRICT, MA-  
HONING COUNTY, OHIO—\$250,000.00.

COLUMBUS, OHIO, January 11, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2155.

OFFICES COMPATIBLE—MAYOR OF INCORPORATED VILLAGE AND  
MEMBER RURAL BOARD OF EDUCATION.

*SYLLABUS:*

*The offices of mayor of an incorporated village and member of a rural board of education are compatible.*

COLUMBUS, OHIO, January 11, 1934.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

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

"Will you please advise me whether the offices of Mayor of an incorporated village and member of the Board of Education of a combined village and rural school district, made up of said incorporated village and a part of the township in which it is situated are compatible?"

In a subsequent communication you ask what is the result in case these offices are incompatible. That is, does he forfeit both offices or may he hold one or the other of these offices?

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. S. 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."

In reference to your first question, I call your attention to an opinion to be found in the Annual Report of the Attorney General for 1913; Vol. II, page 1372. The syllabus of that opinion reads as follows:

"Under the provisions of section 4218, General Code, a member of the village council may not serve as a member of the village school board. The mayor of a village may serve as a member of the village board of education."

The following excerpts are relevant in the discussion of this opinion:

"The mayor and the council clearly occupy distinct offices and represent distinct departments in the village government. \* \* \* \*

It seems clear, therefore, that the one duty wherein he shares in the obligations of the council, to wit: that of voting in case of a tie, may not be viewed as sufficient to constitute him a member of council, within the meaning of section 4218, General Code."

In Opinions of the Attorney General for 1918, Volume I, page 924, it was held as disclosed by the syllabus:

"The mayor of a village may also hold the office of member of the board of education for a district which includes the village of which he is mayor."

The above 1918 opinion was cited with approval in Opinions of the Attorney General for 1927, Vol. III, page 1860 at page 1862. The first branch of the syllabus of this opinion reads as follows:

"A justice of the peace may also hold the office of member of the board of education of the rural school district in which he resides."

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.

Section 5625-1, General Code, defines the taxing authority of a municipality as "the council or other legislative authority of such municipal corporation." This section also states that the fiscal officer of a village is the village clerk. It seems that the mayor of a village does not appear before the budget commission.

Section 4259, General Code, reads as follows:

"The mayor shall communicate to council from time to time a statement of the finances of the municipality, and such other information relating thereto and to the general condition of the affairs of the municipality as he deems proper or as may be required by council."

I do not think that this section would render the offices in the present case incompatible. It is to be noted that the mayor of a village is not compelled to give his full time to the duties of his office and the same is true with members of a rural board of education. It would follow that in the present situation the person in question may hold the two offices at the same time.

In view of my answer to your first question, it is unnecessary to consider your second question.

It is therefore my opinion, in specific answer to your question, that the offices of mayor of an incorporated village and member of a rural board of education are compatible.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

2156.

SECURITIES—COUNTY COMMISSIONERS UNAUTHORIZED TO RELEASE SAME WHEN BONDS ISSUED AGAINST THEM UNDER H. B. 706—DEBT OF BANK TO COUNTY MAY NOT BE RELEASED BY COMMISSIONERS WHEN.

**SYLLABUS:**

*Securities held by a county against which bonds have been issued under authority of House Bill 706 of the 90th General Assembly, may not be released by the county commissioners under authority of Section 2416, General Code. Neither may the commissioners under such circumstances, under Section 2416, General Code, re-*