

OPINION 65-61**Syllabus:**

A member of the State Board of Education may not accept an appointment by a municipal Judge as substitute during the judge's vacation period without violating the prohibition contained in Section 3301.031, Revised Code of Ohio.

To: E. E. Holt, Superintendent of Public Instruction, State Department of Education, Columbus, Ohio
By: William B. Saxbe, Attorney General, April 12, 1965

Your request for my opinion reads as follows:

"I would appreciate having your opinion on the question of whether a member of the State Board of Education may accept an appointment by a municipal judge as a substitute during the judge's vacation period in accordance with Section 1901.10 and 1901.12 of the Revised Code without violating the prohibition contained in Section 3301.031 to the effect that a member of the board shall not hold any other public position of trust or profit."

Section 1901.10, Revised Code of Ohio, provides in pertinent part as follows:

* * * * *

"When a judge of a municipal court having only one judge is temporarily absent or incapacitated, the judge may appoint a substitute who has the qualifications required by Section 1901.06 of the Revised Code, and if such judge

is unable to make the appointment the chief executive shall appoint a substitute. * * * All courts shall take judicial notice of the selection and powers of the acting judge, who shall be paid in the same manner and at the same rate as the incumbent judge."

(Emphasis added)

Section 1901.12, Revised Code of Ohio, as pertinent herein provides as follows:

"A municipal judge is entitled to thirty days vacation in each calendar year. * * *

"When a court consists of a single judge, a qualified substitute may be appointed in accordance with Section 1901.10 of the Revised Code to serve during the thirty days vacation period, who shall be paid in the same manner and at the same rate as the incumbent judge. Where a court consists of two judges, one of such judges shall be in attendance at said court at all times. Where a court consists of more than two judges, two thirds of the court shall be in attendance at all times. * * *."

Applying the latter statutes to the subject inquiry, several conclusions seem readily apparent. A substitute municipal judge may be appointed during the temporary absence of the regular judge. When a regular judge takes his thirty days vacation to which he is entitled under Section 1901.12, Revised Code, supra, he is in effect temporarily absent from his office within the meaning of Section 1901.10, Revised Code, supra.

Section 3301.031, Revised Code of Ohio, provides in pertinent part as follows:

"Each member of the state board of education shall be a qualified elector residing in the territory composing the district from which he is elected * * *. A member of the board shall not during his term of office hold any other public position of trust or profit. * * *."

(Emphasis added)

Without reference to authority, it is well settled and recognized by the laws of this state that the office of Municipal Judge is a public position of trust. Further, any person appointed to the office of judge whether regular or substitute is entitled to the profits of said office in the nature of pay or compensation for duties performed incident thereto and for the period of time served. Section 1901.10, Revised Code, supra.

Section 3301.031, Revised Code, supra, places a mandatory prohibition against members of the State Board of Education, during their term of office, from holding any other public position of trust or profit. I feel that the tempo-

rary nature of the position does not serve to alter the fact that it is a position of trust.

Therefore, in answer to your specific inquiry, it is my opinion and you are accordingly advised that a member of the State Board of Education may not accept an appointment by a Municipal Judge as substitute during the judge's vacation period without violating the prohibition contained in Section 3301.031, Revised Code of Ohio.