

1314.

OFFICES—TOWNSHIP TRUSTEES AND MEMBER OF VILLAGE OR RURAL BOARD OF EDUCATION IN THE SAME TOWNSHIP INCOMPATIBLE.

SYLLABUS:

The office of township trustee and member of a village or rural board of education, in a school district the territory of which district is contained either wholly or in part within the township, are incompatible.

COLUMBUS, OHIO, November 29, 1927.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication of recent date, as follows:

“There has been elected in Huron Township a member of the Board of Trustees and also the same person was elected on the Board of Education of Huron Township Rural School District.

The question now arises as to whether or not a person can be a member of the above offices and in looking over the statutes I did not find any particular statute covering the same or an opinion of the Attorney General on the above situation.

Will you kindly give me your opinion as to whether or not the same person can act as member of the Board of Education and Board of Trustees in the same township.”

There is no specific inhibition upon a person who is a duly qualified and acting township trustee at the same time being a member of a rural board of education for a rural school district which is comprised either in whole or in part of territory embraced within the township for which he is trustee. In such cases, to determine whether or not the same person may simultaneously hold both positions, resort must be had to the common law rule of incompatibility of offices. This rule is stated in the case of *State ex rel. vs. Gebert*, 12 O. C. C. (N. S.) 274, as follows:

“Officers 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 a former opinion of this department, found in Opinions of the Attorney General for 1915, Vol. III, page 2357, it is held:

“The office of township trustee and member of the board of education in and for the same township are incompatible in that they may be, and frequently are, adverse in the matter of the levying and adjustment of tax rates as provided by Sections 5649-3a, 5649-3b, as amended 106 O. L., 180, and 5649-3c, G. C.”

Again, in 1917, the same question was considered by this department in an opinion found in Opinions of the Attorney General for 1917, Vol. I, page 256, in which it is stated:

"The duties of a member of a township board of education and the township trustees are incompatible and the two offices cannot be held contemporaneously by the same person."

It will be observed upon examination of the opinions of 1915 and 1917, above referred to, that the conclusion of the attorney general is based in each instance on the adverse interests which township trustees and members of boards of education, for districts comprising territory within the township taxing districts, must necessarily represent when adjustments are made in the budgets of the several taxing districts by the county budget commission.

These conclusions are deduced from the provisions of Sections 5649-3a, 5649-3b and 5649-3c of the General Code relating to the duties of the county budget commission. In the opinion of 1915 it is stated:

"It is apparent without further discussion, that under the provisions of the section last quoted (5649-3c), the budget commissioners may be compelled to make changes in the original estimates made and contained in the budgets submitted by township trustees and boards of education. In the event this becomes necessary, which is very frequently the case, the members of said two taxing authorities, viz., township trustees and board of education, are called before the budget commissioners for conference to determine what changes shall be made in the estimates submitted by them. This necessarily involves the consideration by the budget commissioners of the merits of the respective claims made by the township trustees and board of education. Under such circumstances the same individual may not be permitted to represent such adverse interests."

Sections 5649-3a, 5649-3b and 5649-3c, General Code, were repealed by the 87th General Assembly but substantially the same provisions with reference to the procedure to be followed by the county budget commission in adjusting the budget of the several taxing subdivisions are contained in Sections 5625-19, et seq., General Code (112 O. L. 299.)

I am therefore of the opinion that the office of township trustee and member of a village or rural board of education, in a school district the territory of which district is contained either wholly or in part within the township, are incompatible.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1315.

APPROVAL, ABSTRACT OF TITLE TO LAND IN ROSS COUNTY, OHIO.

COLUMBUS, OHIO, November 29, 1927.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract of title prepared and certified by Wade J. Beyerly of Chillicothe, Ohio, under date of October 22, 1927, accompanied by an encumbrance estimate and a deed pertaining to the following described premises: