

2540

POSITIONS OF CHAIRMAN OF CHILD WELFARE BOARD OF A COUNTY AND ADMINISTRATOR OF THE RETARDED CHILDREN'S SCHOOL OF SUCH COUNTY ARE INCOMPATIBLE.

## SYLLABUS:

The positions of chairman of a child welfare board of a county and administrator of the retarded children's school of such county are incompatible.

Columbus, Ohio, September 27, 1961

Hon. Stanley E. Kolb, Prosecuting Attorney  
Warren County, Lebanon, Ohio

Dear Sir:

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

"Judge Robert G. Ray has asked me to advise him in regard to the compatibility of an individual holding the office of the Chairman of the Child Welfare Board and also Administrator of the Retarded Children's School of the County who will be appointed by the Child Welfare Board.

"It is my opinion that the two offices are incompatible but yet I would like to seek an informal opinion from your office.

"I will appreciate your courtesy in this matter."

I find no statutory prohibition which would preclude an individual from holding the two positions in question, and therefore we must look to the common law to determine whether or not said positions are compatible. The common law rule of compatibility of offices is stated in the case of *The State of Ohio, ex rel. Attorney General v. Frank Gebert*, 12 O.C.C., N.S., 274, wherein the court said at page 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."

Based on the facts set forth in your letter of request, it appears that the position of administrator of a retarded children's school of a county is subordinate to the child welfare board since the child welfare board must

appoint the person to hold said position. Furthermore, with regard to child welfare generally in a county, the child welfare board, where one exists, is of necessity impressed with the powers and duties to see that services deemed by it to be necessary are properly performed. Section 5153.16, Revised Code. It would naturally follow that in performing said duties, a member of a child welfare board would be acting in a capacity which is a check upon the administrator of the retarded children's school.

Accordingly, I am of the opinion and you are advised that the positions of chairman of a child welfare board of a county and administrator of the retarded children's school of such county are incompatible.

Respectfully,

MARK McELROY  
Attorney General