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**SYLLABUS:**

The position of township clerk is incompatible with the position of member of board of health of a general health district. (Informal Opinion No. 465, Informal Opinions of the Attorney General for 1955, overruled in part).

Columbus, Ohio, October 8, 1963

Hon. Thomas R. Spellerberg  
Prosecuting Attorney  
Seneca County  
Tiffin, Ohio

Dear Sir:

I have your request for my opinion which asks in substance whether the position of township clerk is compatible with the position of a member of board of health of a general health district.

Since there are no constitutional or statutory provisions expressly prohibiting the simultaneous holding by one person of the

two positions in question, it becomes necessary to consider the common law test of incompatibility set forth in the case of *State ex rel. Attorney General v. Gebert*, 12 C.C. (N.S.) 274 at page 275, wherein it was said:

“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.”

By virtue of Section 507.01, Revised Code, the township clerk is a public officer elected by the electorate in the township in which such clerk is to serve. By virtue of Section 5705.01, Revised Code, (uniform tax levy law) the township clerk is the fiscal officer for his township. Under Section 5705.01, *supra*, and Section 5705.28, Revised Code, a township is a subdivision within the meaning of the tax levy laws and as such, the taxing authority is charged with the duty of preparing and adopting a budget for the next succeeding fiscal year, which budget must be submitted to the county budget commission for its action thereon.

It should also be noted that a general health district is a taxing unit within the meaning of Section 5705.01 (H), Revised Code, and that the district board of health as the district authority must file, pursuant to Section 3709.28, Revised Code, an itemized estimate of amounts necessary for current expenses for the next ensuing fiscal year. It is further provided that such estimate shall be submitted to the county budget commission which may reduce any item in such estimate but may not increase any item or the aggregate of all items. In Opinion No. 2603, Opinions of the Attorney General for 1930, the question of the compatibility of the offices of township trustee and member of the board of a general health district was presented. In arriving at the conclusion that such positions are incompatible, the then Attorney General reasoned on page 1719 as follows:

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“Obviously the township trustees are required to include the township’s share of the general health district expenses in the general levy, and this amount is the amount apportioned by the county auditor under Section 1261-40, General Code.

“Therefore it is apparent that if a township trustee

were also a member of the board of a general health district, he would have to prepare budget items to submit to the county auditor and budget commission, and then later include portions of the amount of said items in the general levy for current expenses of his township. There might be a tendency for said township trustee acting as health board member to make the amount of the request for funds less than they ordinarily should be, so that his township would not have to have apportioned to it as large an amount to levy for health district expenses.

“It is clear from the foregoing, that the interests of the township and the general health district will be conflicting in that the amount of funds made available to the one subdivision will often be dependent in a measure upon the amount made available to the other. It would follow that one serving in both capacities might be influenced of the needs of the other.

“This is further illustrated by a consideration of the provisions of Section 1261-41, General Code. The pertinent portion of said section reads:

‘In case of epidemic or threatened epidemic or during the unusual prevalence of a dangerous communicable disease, if the moneys in the district health fund of a general health district are not sufficient, in the judgment of the board of health of such district, to defray the expenses necessary to prevent the spread of such disease, such board of health shall estimate the amount required for such purpose and apportion it among the townships and municipalities in which the condition herein described exists, on the basis provided for in Section 25 (1261-40) of this act. \* \* \*

“From the provisions of the above statute, it is obvious that in cases of epidemic, the general health district board must apportion the expenses necessary to prevent such epidemic among the townships and villages in such district, if the district health fund is depleted. As was pointed out in the preceding paragraphs, there might be a tendency for the township trustee member of the health district board to see that a lesser amount than what would be reasonable, is apportioned to his township.

“In an early English case, *Rex, v. Tizzard*, 9 B. & C. 418, Judge Bailey in speaking of incompatibility of offices uses this language:

‘I think that the two offices are incompatible

when the holder cannot in every instance discharge the duty of each.'

"Consequently, I am of the opinion that the offices of township trustee and member of a board of health of a general health district are incompatible.

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The reasoning applied in the above opinion is equally applicable to the question under discussion. In Opinion No. 2480, Opinions of the Attorney General for 1961, my predecessor in office in determining the compatibility of the offices of township clerk and member of the local township school board, stated on page 534 the following:

"Since 1927, when the Budget Law went into effect, it often happens that officers of different political subdivisions of the state find themselves on opposite sides in the contest for a share of the tax dollar and that, thus, incompatibility not apparent at first blush, is discovered where there was none before. Pursuing the instant question in such light, I find that under Section 5705.01 (C), Revised Code, the taxing authority of a school district is the board of education, and that of a township, the board of township trustees. Under Section 5705.28, Revised Code, the taxing authorities of the respective subdivisions are charged with the duty of preparing their tax budgets for the next succeeding fiscal year by a certain date of the previous year. A member of a local board of education is thus required to help in the preparation of the tax budget of his school district. A township clerk, being an officer of the township, elected independently of township trustees, is not charged specifically with such duty as regards the township tax budget. However, under Section 5705.01 (D), Revised Code, the township clerk is designated as the fiscal officer of the township."

In the course of the above opinion at page 534, it was reasoned that because the township clerk is the fiscal officer of the township, who would often be required to appear before the budget commission to defend the township budget, "it might appear that his appearance before the budget commission could be directed against the budget requests of other competing subdivisions, among them the budget request of the board of education of the local school district."

In my opinion such reasoning applies to the present situation

with the result that the two offices in question could not be carried out properly by one person.

I am not unaware of the conclusion reached in Informal Opinion No. 465, Informal Opinions of the Attorney General for 1955, that the position of township clerk is compatible with the position of member of board of health of a general health district. However, the above conclusion was based, without discussion, on an earlier opinion which held that the positions of township clerk and township health officer are compatible and hence may be held by the same person.

In view of subsequent legislation which abolished township health districts and township health officers, and based on the foregoing reasoning, I am impelled to disagree with the conclusion reached in the 1955 opinion, *supra*, that the two positions under consideration are compatible.

It is therefore my opinion and you are advised that the position of township clerk is incompatible with the position of member of board of health of a general health district. (Informal Opinion No. 465, Informal Opinions of the Attorney General for 1955, overruled in part).

Respectfully,  
WILLIAM B. SAXBE  
Attorney General