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COUNTY TREASURER--BOARD OF ELECTIONS--INCOMPATIBLE--3501.17, 5705.27 *et seq.* R. C.--BUDGET COMMISSION--1949 OAG 924--1954 OAG 3930.

SYLLABUS:

The offices of county treasurer and member of a county board of elections are incompatible.

Columbus, Ohio, January 22, 1957

Hon. Marlowe Witt, Prosecuting Attorney
Henry County, Napoleon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“There is an opening in the Board of Elections of Henry County, Ohio. The question was asked of me, ‘May the County Treasurer, who is not now running for office, be a member of the Board of Elections since he is not now a candidate for office?’”

The usual rule as to common law incompatibility of offices is that one individual may not hold two offices simultaneously if one of them is in any way subordinate to the other or is a check upon the other.

By referring to Section 3501.17, Revised Code, it will be seen that the expenses of the board of elections are to be paid from the county treasury in pursuance of appropriations by the board of county commissioners in the same manner as other county expenses are paid. The significance of this provision is that a budget will necessarily be prepared annually to include the expenses of the board of elections, and will, under the requirements of Section 5705.27 *et seq.*, Revised Code, be submitted to the county budget commission for approval. The county treasurer is, of course, a member of the budget commission. See Section 5705.27, Revised Code.

It is thus to be seen that the individual concerned, as a member of the board of elections, will have some voice in the preparation of the budget

and its presentation to the budget commission, and in the normal situation could be expected to appear before the budget commission to defend or justify the expense items therein included. Having done this, he would then be under the duty, as a member of the budget commission, to participate in the approval or revision of such budget under authority of Section 5705.32, Revised Code. Such a situation, in my opinion, presents such a definite point of subordination of one office to the other so as to render the two offices incompatible.

In a somewhat similar situation, in Opinion No. 3930, Opinions of the Attorney General for 1954, page 307, the writer had occasion to remark:

* * * "There is, of course, a quite evident incompatibility between the office of prosecuting attorney, who is ex officio a member of the county budget commission, and the office of a member of a board of elections, for the incumbent of the former, as such commissioner, has the duty to adjust budget estimates submitted by such board in the steps preliminary to the appropriation of funds for the use of the board. * * *"

In Opinion No. 924, Opinions of the Attorney General for 1949, page 555, one of my predecessors in this office held that the office of clerk of the board of elections and the position of deputy county treasurer were compatible. In that opinion, however, the writer said at page 558:

* * * "The question is thus presented, that since the budget commission must approve the budget of the board of elections, is this fact sufficient to declare the offices of the clerk of the board of elections and deputy county treasurer incompatible? I am of the opinion that it is not.

"In the first place, the office of clerk of a county board of elections is a ministerial one; *he has no duties as to the preparation of a budget or to advocate the adoption of a budget. He will never have to present arguments relative to adjustment or revision of the budget.* * * * " (Emphasis added)

The language which I have emphasized in this passage quite clearly implies that if the writer had been concerned with the position of prosecuting attorney and *member* of the county board of elections his conclusion would have been to the contrary, for he definitely suggests in that language that a member of the board of elections *does* have a duty to prepare a budget and to advocate its adoption before the budget commission.

For these reasons, in specific answer to your inquiry, it is my opinion that the offices of county treasurer and member of a county board of elections are incompatible.

Respectfully,
WILLIAM SAXBE
Attorney General