

David H. Palmer, Jr. Esq.  
Yavapai County Attorney  
Prescott, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Palmer:

This will acknowledge receipt of your letter of October 14, in which you ask for an opinion on the following two questions:

" \* \* \* (1) is it lawful for a state or county employee or officer to be a precinct committeeman, and (2) may a state or county employee or officer be a school trustee."

Answering your first question:

It clearly appears from a study of your first question that a precinct committeeman is not a public officer and thus there would appear to be no prohibition against a state or county employee or officer holding the office of precinct committeeman in the party of which he is a member.

In 18 Am.Jur. 271, paragraph 139, is set out the rule of law applicable.

"Committeemen as Public Officers.--It is generally agreed that party committeemen do not become public officers by reason of the fact that they are elected at a statutory primary election, because the duties of a public office are in their nature public; that is, they involve in their performance the exercise of some portion of the sovereign power, whether great or small, in the performance of which all citizens, irrespective of party, are interested, either as members of the entire body politic or of some duly established division of it. Manifestly, membership in a political committee belonging to one party or another does not come within the above description of what constitutes public office, and the fact that the legislature undertakes by statute to regulate the election and conduct of political committees does not make the office a public one. The members thereof continue to be, as before, officers of the party which elects them, and their duties are confined to matters pertaining to the party to which they belong and which alone is interested in their proper performance. Among other possible consequences of this view may be mentioned its effect upon the availability of quo warranto as a remedy to test the right to such office or position and the application to

such a committeeman of a statutory requirement as to the filing of a statement of campaign expenses."

We note no provision in the law requiring a precinct committeeman to file a statement of his campaign expenses.

This rule is supported by the Arizona cases of Winsor v. Hunt, 29 Ariz. 504, 243, P. 407; Stapleton v. Frohmiller, 53 Ariz. 11, 85 P.2d 49; and the annotations found in 53 A.L.R. 595 and 93 A.L.R. 333. The Stapleton case and the annotations, supra, clearly define the distinction between an "office" and "mere employment".

However, the general rule is subject to specific statutory restrictions. Such specific restrictions are found in the following statutes: Section 56-901 ACA 1939 relates to the Industrial Commission and provides in part:

" \* \* \* and no commissioner or any regular employee of the commission shall serve on any committee of any political party."

Section 57-106, as amended, relates to the Fish and Game Department, and provides:

"Political activity prohibited.--Neither the state game and fish director or any other employee shall take active part in any political campaign, nor use his office or influence in any way whatsoever in interfering with an election or affecting the results thereof. (This probably includes the office of precinct committeeman)

Failure to abide by the provisions of this section shall constitute grounds for dismissal of the state game and fish director or any other employee of the commission."

Section 59-108, as amended, relates to the Highway Department, and provides:

"Prohibiting political activity.--- No commissioner, state highway engineer, secretary or any employee of the Arizona highway department, shall serve on any committee of any political party, \* \* \* . Any violation of this section shall be cause for dismissal or removal from the department."

Section 72-102, as amended, relates to the Department of Liquor Licenses and Control, and provides in part:

" \* \* \* Neither the superintendent or any employee of the superintendent shall serve on any committee of any political party, \* \* \*."

The Federal law also contains certain restrictions. Title 5, Section 118K, U.S. Code, provides the following:

"Employees of State or local agencies financed by loans or grants from United States--Influencing elections; officer or employee defined

(a) No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency shall (1) use his official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof, \* \* \* . No such officer or employee shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of the second sentence of this subsection, the term 'officer or employee' shall not be construed to include (1) the Governor or the Lieutenant Governor of any State or any person who is authorized by law to act as Governor, or the mayor of any city; (2) duly elected heads of executive departments of any State or municipality who are not classified under a State or municipal merit or civil-service system; (3) officers holding elective offices."

It would also appear then, that the officers and employees of the state departments or agencies which receive loans or grants from, or are financed by, the Federal Government fall within the restrictions and may not serve as precinct committeemen. Typical of such departments or agencies are: the Department of Social Security and Public Welfare, Department of Public Health and the Employment Security Commission.

Answering your second question:

With certain specific exceptions, whether or not a state or county employee or officer may be a school trustee would depend upon whether the office held and the office of school trustee would be incompatible.

With respect to the specific exceptions, we find in Article IV, Part 2, Section 5, of the Constitution of Arizona that a school trustee may be a member of the legislature.

On the other hand, in Opinion No. 50-111, written by Mr. Maurice Barth of this office, it is held that a school trustee may not be employed to drive a school bus and be paid from funds of the school district. The authority for this opinion is found in Section 12-401 ACA 1939, which provides:

"Officers not to be interested in public contracts.--Members of the legislature, state, county, city and precinct officers shall not be interested directly or indirectly (indirectly) in any contract or in any sale or purchase made by them in their official capacity, or by any body or board of which they are members. Every contract, sale or purchase made in violation hereof, may be avoided at the instance of any party except the officer interested."

Section 43-1705 provides a penalty for violation of the foregoing Section 12-401.

This section may very well extend to other transactions in which a school trustee might be involved.

Section 12-110 ACA 1939 provides:

"Incumbent filing for election.--(a) No person shall hold more than one (1) office at the same time, nor shall any incumbent of an elective office, whether holding by election or appointment, be eligible for nomination or election to any office other than the office being so held, nor shall the nomination papers of any such person be accepted for filing. \* \* \* "

Clearly an incumbent of an elective office would not be eligible for nomination or election to the office of school trustee. So it is clear that if the officer holds an elective office he may not at the same time hold the office of school trustee.

Section 12-110, supra, must be considered in pari materia with Section 12-101, which provides:

"Definitions.--By the word 'office,' 'board,' or 'commission,' used in law, is meant any office, board or commission of the state, or any political subdivision thereof, the salary or compensation of the incumbent or members of which is paid out of a fund raised by taxation, or by public revenue; \* \* \* by the word 'officer,' or 'public officer,' unless the context otherwise requires, is meant the incumbent of any office, member of any board or commission, his deputy or assistant exercising the powers and duties of

such officer other than clerks or mere employees of such officer."

Since the office of school trustee carries with it no salary or compensation, then the prohibition contained in Section 12-110, supra, that "no person shall hold more than one office at the same time \* \* \* " does not apply.

It is obvious from Section 12-101, supra, that the distinction heretofore set out between "officers" and "mere employees" is equally applicable.

Again whether or not the office being held by the incumbent and the office of school trustee which he might attempt to hold are incompatible depends entirely upon the circumstances of each case.

Words and Phrases, Volume 20, pages 529 et seq. contains clear definitions of "incompatible office". One such is:

"Public offices are 'incompatible' when their functions are inconsistent, their performance resulting in antagonism and a conflict of duty, so that the incumbent of one cannot discharge with fidelity and propriety the duties of both. The office of treasurer of a school district and the office of county commissioner, in view of the duties of each relative to schools, are incompatible. State v. Sword, 196 N.W. 467, 157 Minn. 263."

Under the subject "Public Officers" in 42 Am.Jur. at page 926, paragraph 58 et seq. is set out a clear exposition of the matter. Our Supreme Court has, in several cases discussed this question of incompatibility of offices.

See McCluskey v. Hunter, 33 Ariz. 513, 266 Pac. 18

Campbell v. Hunt, 18 Ariz. 442, 162 P. 882

Coleman v. Lee, 58 Ariz. 506 at 513, 121 P. 2d 433

For other jurisdictions, see:

Knuckles v. Board of Education, (Tex) 114 S.W. 2d 511

State ex rel Wittmer (Mont.) 144 Pac. 648

Haymaker v. State ex rel McCain, (N.M.) 163 Pac. 248

Mulholland v. Ayers, (Mont.) 99 P.2d 234

State ex rel Flynn v. Ellis, (Mont.) 98 P.2d 879

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Wells v. State, ex rel Peden, (Ind.) 94 N.E. 321

We hesitate to offer you a general conclusion that a state or county employee or officer may, or may not, be a school trustee. As distinct problems involving specific cases raise such questions as you are unable to answer, please feel free to call upon us further.

Sincerely yours,

FRED O. WILSON  
Attorney General

PHIL J. MUNCH  
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PJM:mw