

December 14, 1949

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Mr. F. Preston Sult  
County Attorney  
Pinal County  
Florence, Arizona

Dear Mr. Sult:

We have your letter of recent date wherein you ask our opinion on the following questions:

"1. Does this Chapter (Chapter 68, Laws 1949) prohibit a person from simultaneously holding the office of school trustee and of city councilman in a municipality incorporated under the common council form of government?

2. Does this act prohibit the same person from holding office as a member of the board of trustees of a common school district and at the same time hold the office of member of the board of supervisors of the county?

3. Does this act prohibit a person from holding office as a member of the board of directors of an irrigation and drainage district, a soil conservation district, and an electrical district?"

We will answer your questions in the order asked. Chapter 68, Laws of 1949, insofar as applicable to your questions reads in part as follows:

"12-110. Incumbent Filing for Election.--No person shall hold more than one office at the same time. \* \* \*"

The title to said chapter is as follows:

"An Act: Relating to Public Officers and Amending Article 1, Chapter 12, Arizona Code of 1939 by adding Section 12-110." (Emphasis supplied)

The first sentence in the body of the Act read:

"Article 1, Chapter 12, Arizona Code of  
1939 is amended by adding Section 12-  
110 to read:" (Emphasis supplied)

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and then sets forth the language heretofore quoted.

By the language used in the title and body of the Act, it is apparent the legislature intended the Act to apply only to the class of offices mentioned in Chapter 12 of the Code. Had it intended otherwise it would have been passed as independent legislation and not tied into said Chapter 12, wherein public offices and officers are defined. Section 12-101 reads in part as follows:

"12-101. 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."

This section contemplates that to be a public office within the purview of said Chapter 12, the officer must receive a salary or compensation from public revenue otherwise there would have been no reason for the definition. Said Chapter 68 is a prohibition against officers whose salaries or compensation are paid out of a fund raised by taxation or by public revenue, in other words, to officers of profit as distinguished from officers of trust. McCluskey v. Hunter, 33 Ariz. 513, 266 P. 18. The prohibition is directed against a person holding more than one office of profit, and if one of the offices held by a person is an office of trust, said Chapter is inapplicable and a person may hold the two offices at the same time unless the holding of the two is incompatible as declared by the common law where the rule is that a person may not hold two incompatible offices at the same time. This rule is based on public policy, and when the duties of either office are such that the holder of one cannot in every instance properly, fully and faithfully perform all the duties of the other office they are incompatible. People v. Hass, 145 Ill. 283.

In Perkins v. Manning, 59 Ariz. 60, 122 P. 2d 857, our Supreme Court said one of the basic tests for determining whether two offices are incompatible is whether one office is subordinate to or interferes with the other, or where one office has the power or duty of reviewing or regulating the conduct of the other, or when by the very nature of the offices it is a physical impossibility for any person to perform the duties of both offices, or when by the very nature and duties of the two offices they are such as to render it improper from consideration of public policy for one incumbent to retain both. Other authorities lay down the rule that if one office is by law authorized to supervise or in any manner control the conduct of the other, there is an incompatibility. Applying these rules, we find nothing in our law to convince us that holding the office of city council and the office of school trustee at the same time is incompatible.

School district trustees do not receive any salary or compensation for their services to be paid out of funds raised by taxation or public revenue. They hold offices of trust and said Chapter 68 does not apply.

For the reasons stated, it is our opinion a person may, at the same time, hold the office of school trustee and city councilman of a city incorporated under general law.

As to your second question, we do not think a person may hold the office of county supervisor and school trustee at the same time because the duties of the two offices are incompatible; under the common law, a person may not hold two incompatible offices at the same time.

School district trustees do not receive salary or compensation, therefore Chapter 68 is inapplicable for the reasons heretofore stated.

The reason we think there is an incompatibility in the holding of the two offices is because of the relationship between the offices and a possible conflict of duties of the two offices. In certain instances the county board exercises supervisory control over school district boards, and in certain instances the actions of the school board are subordinate to the action of the board of supervisors, and the county board of supervisors may review, supervise and regulate the conduct of the trustees of a school board. We will point out some of the sections of our Code which create this situation.

We first call your attention to Section 17-309 of the Code which reads as follows:

"The board of supervisors, under such limitations and restriction as are prescribed by law, may:

1. Supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, management or disbursement of the public revenues, see that they faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require renewals of their official bonds and make reports, and present their books and accounts for inspection;

2. Divide the counties into such districts or precincts as required by law, change the same and create others as convenience requires;  
\* \* \* " (Emphasis supplied)

The trustees of a school district do not assess, collect or safekeep public revenue, but they do manage the public revenue of the district and order the disbursement of the same. By the provisions of said section, the supervisors are enjoined with the duty of seeing that school district officers faithfully perform their duties and, in the event of a wrongdoing of a school trustee, the supervisors may direct a prosecution for his delinquency in connection with the managing or disbursing of the public revenues of the district. To illustrate, if a person is a school trustee and at the same time is a county supervisor and the person is guilty of a wrongdoing in connection with the managing or disbursing of school funds, then the same person who committed the wrong is required by law to direct a prosecution against himself. Considering this section in connection with the duties of school trustees, as presented by Sections 54-416, et seq. ACA 1939, you will note that supervisors review certain actions of the trustees. Supervisors are required to approve all boundaries of each school district and approve any change thereof. Sections 54-403 and 54-405 ACA 1939. Section 54-423 of the Code requires the approval of the board of supervisors for the deposit or investment of funds belonging to or credited to the school districts and for the withdrawal of such deposits, or the sale of bonds purchased by the districts; and Section 54-416 of the Code gives the board of supervisors authority in its discretion to make sufficient levy upon the property of the districts to produce the amount of money asked for by the board of trustees in their annual budget.

Several other sections of the Code could be cited to show that the board of trustees of a school district is subordinate to, and subject to the control and supervision of the board of supervisors of the county in which such school district is located.

Because of the incompatibility of the duties of the two offices, it is our opinion a person may not hold the offices of school trustee and county supervisor at the same time.

In answer to your third question, we think a person may at the same time hold two or more of the positions mentioned in your third question if there are no conflicting interests between the districts arising out of contractual relations. Directors of such districts do not occupy such offices as are contemplated by Chapter 68 and for the further reason that holders of the offices or positions mentioned in your third question are not officers as that term is generally understood; they do not come within the definition of a public officer in the statute above cited or as defined by our Supreme Court in the case of Stapleton v. Frohmler, 53 Ariz. 11, 85 P. 2d 49.

"We think that in 22 Ruling Case Law, 381, § 12, the chief elements of a "public office" are well summed up. The specific position must be created by law; there must be certain definite duties imposed by law on the incumbent, and they must involve the exercise of some portion of the sovereign power. A position which has these three elements is presumably an "office," while one which lacks any of them is a mere "employment." \* \* \* (Emphasis supplied)

See also Windsor v. Hunt, 29 Ariz. 504, 243 P. 407. A member of the board of directors of an irrigation and drainage district, a soil conservation or an electrical district does not exercise any portion of the sovereign power but is an employee or officer of a corporation formed for business or economic purposes; therefore, one of the elements necessary to constitute a public office is lacking, that is the exercise of some portion of the sovereign power.

In the case of Ramirez v. Electrical Dist. 37 Ariz. 360, 294 P. 614, in speaking of the purpose of an electrical district, our Supreme Court said:

\* \* \* They are organized for the specific purpose of providing ~~means~~ and means of irrigating land within

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their boundaries and maintaining an irrigation system for that purpose. Colburn v. Wilson, 23 Idaho 337, 130 Pac. 381. 'Their function,' as we said in Day v. Buckeye Water etc. Dist., 28 Ariz. 466, 237 Pac. 636, 638, 'is purely business and economic, and not political and governmental. They are formed in each case by the direct act of those whose business and property will be affected, and for the express purpose of engaging in some form of business, and not of government.\* \* \*"

See also:

Maricopa Municipal Water Conservation Dist.  
v. La Prade, 45 Ariz. 61, 40 P. 2d 94

Day v. Buckeye Water, etc., 28 Ariz. 466,  
237 P. 636

For these reasons it is our opinion a person may hold at the same time two or more of the positions mentioned in your third question.

Very truly yours,

FRED O. WILSON  
Attorney General

EARL ANDERSON  
Assistant Attorney General

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