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DEPARTMENT OF LAW LETTER OPINION NO. 72-11 (R-16)

REQUESTED BY: THE HONORABLE ROBERT R. BEAN
Pinal County Attorney

QUESTION: In light of A.R.S. § 38-296, can a member of
a town or city council serve on a school
board?

ANSWER: No.

The definitions section of Title 38 states, in A.R.S.
§ 38-101, in part, as follows:

"In this title, unless the context other-
wise requires:

"1. 'Office', 'board' or 'commission'
means 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 from a fund
raised by taxation or by public revenue.

* * *

"3. 'Officer' or 'public officer' means
the incumbent of any office, member of any
board or commission, or his deputy or assist-
ant exercising the powers and duties of the
officer, other than clerks or mere employees
of the officer."

The statute in question makes a flat prohibition
against any person holding two elective offices at the same
time, and imposes a penalty for such activity.

"A. No incumbent of an elective office, whether holding by election or appointment, shall be eligible for nomination or election to any office other than the office so held, nor shall the nomination papers of such incumbent be accepted for filing.

* * *

"D. A person violating any provision of this section is guilty of misfeasance in office and the office held by such person shall be declared vacant." A.R.S. § 38-296.

Construing these sections together, it is clearly the intent of the Legislature that, assuming seats on a town or city council and those of a school board are both elective offices, no person may serve in both capacities simultaneously.

Note further that this is merely an extension of the longstanding prohibition against state legislators holding any other office. Prior to 1937, Article 4, Part 2, Section 5 of the Arizona Constitution read:

"No member of the Legislature, during the term for which he shall have been elected, shall be appointed or elected to any civil office or profit under this State, which shall have been created, or the emoluments of which shall have been increased, during said term."

The narrow exceptions to this general rule against dual office-holding are noted in Article 4, Part 2, Sections 4 and 5 of our Constitution:

"Section 4. No person holding any public office of profit or trust under the authority of the United States, or of this State, shall be a member of the Legislature; Provided, that

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appointments in the State militia and the offices of notary public, justice of the peace, United States commissioner, and postmaster of the fourth class, shall not work disqualification for membership within the meaning of this section.

"Section 5. No member of the Legislature, during the term for which he shall have been elected or appointed shall be eligible to hold any other office or be otherwise employed by the State of Arizona or, any county or incorporated city or town thereof. This prohibition shall not extend to the office of school trustee, nor to employment as a teacher or instructor in the public school system."

Considering that, historically, the Legislature has thus imposed a rigid rule against members of its own body holding outside office, probably to circumvent any possibility of conflicts of interest, such a rule and its rigid application must be the intent of that lawmaking body.

Respectfully submitted,



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The Attorney General

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