

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

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June 20, 1972

DEPARTMENT OF LAW LETTER OPINION NO. 72-20-L (R-49)

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

THE HONORABLE JOHN F. TAYLOR
Navajo County Attorney

THE HONORABLE RICHARD J. RILEY
Cochise County Attorney

QUESTION: Should Department of Law Opinion No. 72-4-L
be modified as to the holding that concurrent
service on a town or city council and a school
board is prohibited by A.R.S. § 38-296.A?

ANSWER: Yes.

A.R.S. § 38-101, in pertinent part, reads:

In this title, unless the context otherwise
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 pub-
lic 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.

A.R.S. § 38-296 states in part:

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.

The apparently strict prohibition of the words of A.R.S. § 38-296.A led to the earlier conclusion that a holder of "an elective office", whether compensated or not, was precluded from holding any other elective office. Further study of the problem indicates that insufficient weight was given the definition of "office", "board" or "commission" found in A.R.S. § 38-101, which limits the scope of the legislation to offices ". . . the salary or compensation of the incumbent or members of which is paid from a fund raised by taxation or by public revenue. . . ."

Although A.R.S. §§ 9-232.01 and 9-274 authorize memberships on a town or city council to be salaried positions, membership on a school board is uncompensated. Therefore, it is now the opinion of this office that serving concurrently as a school board member and city council member is not within the literal prohibition of A.R.S. § 38-296.

Statutes relating to the same subject matter are read together and harmonized where possible. See, e.g., Arizona State Highway Commission v. Nelson, 105 Ariz. 76, 459 P.2d 509 (1969).

Further evidence that school board positions are not legislatively intended to be considered within the prohibitions under discussion is to be found in A.R.S. § 38-931.C. In laying down rules governing public employees' political activity, the statute specifically allows service on a common or high school board or junior college governing board.

While it is still the opinion of this office that Opinion No. 72-4-L outlines the safer course to take in regard to the questioned provisions of Title 38, re-examination of the powers and duties of school boards and city councils indicates that

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there is only a remote possibility of conflicts of interests or duties. This office has received information from attorneys intimately familiar with the everyday duties of school board and city council members which indicates that it would be an extremely rare circumstance in which the duties of one office would interfere with the duties of the other. If such a conflict should arise, it would be incumbent on the officeholder affected to refrain from taking any action which would constitute a violation of the conflict of interest statutes.

Department of Law Opinion No. 72-4-L is thus modified to the extent that it conflicts with this opinion.

Respectfully submitted,



GARY K. NELSON
The Attorney General

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