

latter case, the parent or guardian of such child must be financially unable to pay for such treatment and must make the necessary application to the appropriate county board of assistance before payment can be authorized. Similarly, for a county institution district to avail itself of the benefits of those statutory provisions, it likewise, would have to be financially unable to pay for the treatment, by reason of lack of funds, and it would be required to submit the necessary application to the county board of assistance.

We are, therefore, of the opinion that, with respect to those children who are dependents of a county institution district under the County Institution District Law, the Act of June 24, 1937, P. L. 2017, as amended, 62 P. S. § 2201 et seq., and whose records of medical or dental examinations under the School Health Act, the Act of June 1, 1945, P. L. 1222, 24 P. S. § 1525.1 et seq., disclose conditions requiring medical, dental or surgical treatment, the cost of the same is payable by the Commonwealth, from the appropriation made to the Department of Public Assistance, upon the authorization of the appropriate county board of public assistance in accordance with the standards, rules and regulations made under, and the provisions of Section 5 of Act No. 522, approved July 5, 1947, in all cases where the said institution district, because of lack of funds, is financially unable to pay for such treatment and the proper authorities of said institution district make the requisite application to the appropriate county board of public assistance.

Very truly yours,

DEPARTMENT OF JUSTICE,

T. McKEEN CHIDSEY,
Attorney General.

FRANCIS J. GAFFORD,
Deputy Attorney General.

HARRINGTON ADAMS,
Deputy Attorney General.

OPINION No. 577

Public officers—Incompatible offices—State Tax Equalization Board—County commissioner or treasurer—Act of June 27, 1947.

Since the Act of June 27, 1947 (No. 447), creating the State Tax Equalization Board, provides that each of its members shall devote his entire time to the duties of his office, a salary may not be paid to a member of the board who holds the position of county commissioner or county treasurer until he resigns from his county office or his term of county officer expires.

Harrisburg, Pa., February 9, 1948.

Honorable G. Harold Wagner, Auditor General, Harrisburg, Pennsylvania.

Sir: We have your request to be advised concerning whether you may lawfully approve requisitions for the payment of salaries of two members of the State Tax Equalization Board who respectively hold the office of county commissioner and county treasurer.

Article XII, Section 2 of the Constitution of Pennsylvania provides as follows concerning incompatible offices:

No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary, fees or perquisites shall be attached. The General Assembly may by law declare what offices are incompatible.

This provision prohibiting a person from holding both a State and a Federal office is self-executing without legislative aid: Commonwealth ex rel. Crow v. Smith, 343 Pa. 446 (1942). However, under the concluding sentence of article XII, section 2, it has been held that " * * * the courts are not permitted to hold offices incompatible merely because the Legislature has failed to act, * * *": Commonwealth ex rel. Schermer v. Franek, 311 Pa. 341, 347 (1933). Nevertheless, it has been held that dual office holding will not be sanctioned where the two offices are such that it would be against public policy to permit one person to hold both of them: Commonwealth ex rel. v. Snyder, 294 Pa. 555 (1929); Commonwealth ex rel. Adams v. Holleran, 350 Pa. 461 (1944).

There does not appear to be any statutory provision in the General County Law or elsewhere prohibiting a county commissioner or a county treasurer from holding an appointive office under the State government.

There is likewise no provision in the act creating the State Tax Equalization Board (Act No. 447, approved June 27, 1947, P. L. 1046) expressly forbidding a board member from holding a county office. However, section 2(b) of that act significantly provides that:

* * * Each member of the board shall devote *his entire time* to the duties of his office. * * * (Italics supplied.)

In the case of this newly created board this requirement is particularly appropriate. There are 2,544 school districts in the Commonwealth, the taxable real property of each of which must be revalued by July 1, 1949 (section 14) and annually thereafter. The magnitude of this undertaking more than adequately demonstrates

that the board members must exclusively devote their time to the board unhampered by other governmental responsibilities.

Section 7 of the act provides that the board shall have power and its duties shall be:

(1) To determine the market value of taxable real property in each of the school districts and to conduct investigations, require information and have access to whatever public records are necessary in making each such determination.

(2) To require the county commissioners of each county to furnish to it, monthly, a list of all conveyances or other transfers of real estate, or any interest therein, recorded within such county during the preceding month, stating the value of the Federal tax stamps affixed to the deed for each such conveyance, and the assessed valuations for county tax purposes of such real estate.

* * * * *

(7) To subpoena State and local officials and to require from them such information as may be necessary for the proper discharge of its duties.

Section 16 of the act provides that:

Before granting any special aid to any school district, the Superintendent of Public Instruction shall submit the request therefor to the board. The board shall make its recommendations with respect thereto in so far as the same is affected by the district's ability to raise funds by taxation. Before making any such recommendation, the board shall carefully investigate and study the financial circumstances of the district and whether or not it has exhausted its available taxing power not only on real property, but also on all other available property and subjects of taxation, and that collection of such taxes is being effectively made and enforced. Such recommendations shall be for the advice of the Superintendent of Public Instruction in passing on such requests.

Section 9 provides that the county commissioners of each county on the fifteenth day of each month shall prepare, certify and deliver to the board a list of all conveyances of real estate, and paragraph (b) of the same section reads:

* * * * *

(b) The board shall pay to the county commissioners of each county, the sum of ten cents (10¢) for each such conveyance or transfer of real estate on each list so prepared, certified and delivered to the board for its use.

Section 2 of the act provides for an annual salary of \$10,500 for the chairman of the board and each other member thereof an annual salary of \$10,000.

In our opinion, the legislature has inserted this requirement that the board member devote his entire time to his duties as a condition to his incumbency; and this condition plainly precluded a board member from conducting the highly important and demanding duties of a county commissioner or a county treasurer simultaneously with his duties on the board. The term "entire time" connotes undivided and undiminished concentration of one's intelligence, industry and initiative to the task at hand.

Miller *v.* Walley, 84 So. 466, 468, 122 Miss. 521 (1920), construed a bill which read "* * * * the superintendent shall devote his entire time to the duties of his office." * * * The Court said:

We think the word "entire" in the statute means something and imposed upon the superintendent obligations of greater extent than were imposed on him before, and that the Legislature had a right to require the full time of an officer or superintendent of one of its institutions and, at least, the statute was intended to remove from the field of disputation the amount of time that was necessary for the superintendent * * * to devote to the duties of that position.

Quoting from 11 Amer. & Eng. Enc. of Law, at page 48, the Court continued:

"Entire" means whole, undivided; not participated in by others.

See also First Calumet Trust & Savings Bank et al. *v.* Rogers et al., 289 F. 953 (C. C. A. 7th, 1923), where the Court construed a contract of employment between a private corporation and its executive officer requiring him to devote his entire time to the business of his employer. The Court said at page 958:

* * * The entire time * * * under the employment meant his entire capacity in mental attainments and experience.
* * *

Since we are of the opinion that the "entire time" condition in the act of 1947, *supra*, precludes a member of the State Tax Equalization Board from holding the office of county commissioner or county treasurer, it follows that present board members cannot receive compensation from the State Treasury so long as they also hold their respective county offices. This conclusion renders unnecessary the determination of any further question of incompatibility under statute or public policy. In accordance with the opinion in the case of Commonwealth ex rel. *v.* Snyder, *supra*, it would appear that the county commissioner or the county treasurer who has been appointed as a member of the State Tax Equalization Board should be given a reasonable opportunity to make an election between the respective offices.

We are therefore of the opinion that you may not lawfully approve requisitions for the salary of any member of the State Tax Equalization Board who holds the position of county commissioner or county treasurer, until such time as he resigns from his county office, or his term as county officer expires.

Very truly yours,

DEPARTMENT OF JUSTICE,

T. McKEEN CHIDSEY,

Attorney General.

HARRINGTON ADAMS,

Deputy Attorney General.

OPINION No. 578

Banks and banking—State institutions—Investments—Obligations of municipalities or corporations outside of Pennsylvania.

Section 1006 of the Banking Code of May 15, 1933, P. L. 624, as amended, prohibits any Pennsylvania bank or bank and trust company from investing more than 10 percent of its capital and surplus in bonds, debentures, or other evidences of indebtedness of any one out-of-State municipality or corporation.

Harrisburg, Pa., February 27, 1948.

Honorable D. Emmert Brumbaugh, Secretary of Banking, Harrisburg, Pennsylvania.

Sir: You ask to be advised concerning the limitations imposed upon local banks and bank and trust companies in respect to the amount of money which they may invest in bonds of municipalities or corporations outside of Pennsylvania. And you inquire particularly if such institutions may, under the restrictions contained in Section 1006 of the Banking Code, the Act of May 15, 1933, P. L. 624, as amended, invest more than 10% of their capital and surplus in the obligations of any out-of-state municipality or corporation.

Section 1006 of the Banking Code of 1933, as amended, 7 P. S. § 819-1006, consists of Subsection "A", which generally limits the amount to be loaned to any one corporation or person to 10% of capital and surplus of the creditor bank or bank and trust company, followed by five numbered exceptions; subsection "B", which modifies the preceding subsection in certain cases where collateral is involved; and subsection "C", which furnishes the criterion by which liabilities of debtors are to be measured and which defines loans.