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JUDGES: Municipal – Right to serve as attorney for school district.

Judge of Municipal Court established by charter under provisions of Home Rule Act may represent school district as its attorney, but may not appear before municipal court, where charter so provides.

No. 4350

September 8, 1964.

Hon. Charles N. Youngblood, Jr.
State Senator
18666 Hamburg
Detroit 5, Michigan

You have requested my opinion on the following questions:

“May the Judge of a Municipal Court act as attorney for the Board of Education in a school district, which is within the city where he is presiding judge? While serving in both capacities, can he draw salaries from both positions?”

Further inquiry elicits the information that the city in question has a 1960 population of less than 20,000 and is incorporated as a Home Rule City under the provisions of Act 279, P.A. 1909, as amended, being the Home Rule Act.¹ Its charter, adopted in 1951, contains the following provision:

“Section 17.1. There is hereby established a Court in the city. The presiding officer of such Court shall be a justice of the peace elected in accordance with the provisions of this charter. This Court is created under the authority of Section 28 of Public Act 279 of 1909.

“Section 17.2(a) The Court shall be entitled ‘Municipal Court.’

“(b) The justice of the peace shall be entitled ‘Municipal Judge’ and shall be so designated in nominating petitions . . .

“Section 17.3 The presiding officer of the Court . . . (b) shall be an attorney in good standing admitted to practice law. . . Neither he nor his business partners or employees shall have any part in any case before this Court.”

Section 28 of the Home Rule Act, dealing with justice or municipal courts in home rule cities, provides *inter alia* that in cities amending or revising their charters under the Home Rule Act, any city may provide for a court to be presided over by 1 judge or justice who is a qualified resident elector of the city in which election is sought, and who shall be an attorney admitted to practice.² There is nothing in Section 28 of the Home Rule Act which limits the municipal judge in the handling of cases while occupying the position of municipal judge.

Therefore, the answer to your first question is that the municipal judge in such a city, serving under such a charter provision, is not debarred by law from acting as attorney for the Board of Education in a school district which is within the city where he is presiding judge, but may not, nor may

¹ C.L. 1948 and Supps. §§ 117.1 *et seq.*; M.S.A. 1949 Rev. Vol. and Supps. §§ 5.2071 *et seq.*

² C.L.S. 1961 § 117.28; M.S.A. 1963 Cum. Supp. § 5.2107.

his partners or employees, have any part in any case before the Municipal Court.

With respect to your second question, there is nothing in either the charter of the city or in Section 28 of the Home Rule Act to prevent the municipal judge from drawing salary or other compensation as municipal judge while at the same time receiving salary or other compensation for acting as attorney for the school board in the same city.

FRANK J. KELLEY,
Attorney General.

640911.1

EDUCATION, STATE BOARD OF: Member – qualifications of candidate.
PUBLIC OFFICES AND OFFICERS: Compatibility.

Persons who are registered and qualified electors of the state, as provided by Sec. 281 of Act 116, P.A. 1954, as amended, are eligible for election to the office of member of the State Board of Education.

Incompatibility exists between the following positions or offices and that of member of the State Board of Education; member of a local or intermediate board of education; superintendent of schools of a fourth-class, third-class or intermediate school district; position as teacher in a school district; and member of the administrative staff of a community college.

The offices of member of the State Board of Education and of the instructional or administrative staff of a state college or university which confers baccalaureate degrees are not incompatible.

No. 4309

September 11, 1964.

Dr. Lynn M. Bartlett
Superintendent of Public Instruction
Lansing, Michigan

You have requested my opinion on the following questions:

1. May an elected member of a local or intermediate board of education be elected to serve on the State Board of Education provided for in Section 3, Article VIII of the Michigan Constitution of 1963?
 2. May a person occupying the office of superintendent of schools of a fourth class, third class or intermediate school district, or a teacher of a local or intermediate school district, be elected to and serve on the State Board of Education, provided for under the Michigan Constitution of 1963?
 3. May a member of the instructional or administrative staff of a state college or university, or a community college, be elected to and serve on the State Board of Education, provided for under the Michigan Constitution of 1963?
1. In Article VIII, Section 3 of the Michigan Constitution of 1963, the people have provided for a state board of education to consist of 8 members who shall be nominated by party conventions and elected at