

of this state from the burden of the cost of housing in the form of reimbursement to qualified homeowners and renters need not be passed by a two-thirds vote of the members elected to and serving in each house of the legislature under the provisions of Article IV, Section 30, Constitution of 1963.

FRANK J. KELLEY,
Attorney General.

650511.2

SCHOOLS: Districts – Intermediate Board of Education – Local Board of Education – Members of.

PUBLIC OFFICES AND OFFICERS: Incompatibility – Offices of member of Intermediate Board of Education and Local Board of Education.

The office of member of a board of education of a local school district and office of member of an intermediate board of education are incompatible and may not be held simultaneously by the same person.

No. 4129

May 11, 1965.

Mr. Allen E. Keyes
Prosecuting Attorney
Sanilac County
Sandusky, Michigan

You have requested opinion on the following question:

May the president of a local board of education, who is also a member of the intermediate board of education, act on the intermediate board of education in a matter directly involving the school district of which he is president?

Your question concerns the actions of the intermediate board of education on questions of annexation and transfer of territory affecting the school district of which he is a board member.

Act 269, P.A. 1955, as amended, being C.L.S. § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955.

Section 293a of the School Code of 1955, as added by Act 190, P.A. 1962, being M.S.A. 1963 Cum. Supp. § 15.3293(1), provides that each intermediate school district shall be under the supervision and control of a board composed of five members.¹ Any school tax elector in a constituent school district shall be eligible for election or appointment to membership on the board of education of an intermediate school district in accordance with Section 295a of the School Code of 1955, as added by Act 190, P.A. 1962, being M.S.A. 1963 Cum. Supp. § 15.3295(1).

The intermediate school district is the successor to the county school district as set forth in Section 292a of the School Code of 1955, as added by Act 190, P.A. 1962, being M.S.A. Cum. Supp. § 15.3292(1).

¹ This same section of the School Code of 1955 provides for a board of education composed of 7 members in reorganized intermediate districts.

The Attorney General has ruled in Opinion No. 1019, O.A.G. 1949-1950, page 297, that a member of a board of education of a school district may also serve as a member of the county board of education, the predecessor to the intermediate board of education. The statutory provision controlling the qualification of members of a county board of education states that "persons elected need not be members of the district boards of the county." This opinion was rendered prior to passage of the School Code of 1955, as amended, and must be re-examined in light of its provisions.

The intermediate board of education has been given power by the legislature to certify a statement of the amount of taxes for operating purposes, at a rate not to exceed the amount allocated by the county tax allocation board, to be levied by city and township officials as intermediate school district taxes in accordance with Section 298a of the School Code of 1955, as added by Act 190, P.A. 1962, and last amended by Act 290, P.A. 1964, being M.S.A. Curr. Mat. § 15.3298(1). In pertinent part this statute states:

"The board shall: * * *

"(c) Prepare an annual general budget which shall be in the same form as that provided for other school districts. On or before March 1 of each year the board shall submit such budget to a meeting of 1 school board member named from each constituent school district to represent such a district. At such meeting the president of the intermediate district board shall preside, the secretary shall keep the minutes and the representatives of constituent district boards shall by majority vote determine the maximum amount of the intermediate district general budget but shall not make final determinations as to line items in such a budget. Following such meeting the intermediate district board shall file its budget, the maximum amount of which shall not exceed that approved by the school board representatives of constituent districts, with the county clerks of the counties in which it has territory. Each county clerk receiving the budget shall deliver it to the tax allocation board in the same manner as other school district budgets are handled."

Consideration must also be given to Section 11(d) and 11(e) of Act 62, P.A. 1933, as last amended by Act 278, P.A. 1964, being M.S.A. Curr. Mat. § 7.71, which imposes certain duties on county tax allocation boards and provides, in part, as follows:

"(d) The board shall approve minimum tax rates as follows: for the county, 3 mills; for school districts, 4 mills; for community college districts organized after April 15, 1957, 1/1000 of 1 mill; for intermediate school districts, 1/10 of 1 mill; for townships other than charter townships, 1 mill.

"(e) The board shall divide the balance of the net limitation tax rate between all local units after due consideration of the needs of the several local units, the importance to the public of functions of local units which might have to be curtailed, the need of local units for construction or repair of public works, the proposed or accomplished transfer of functions from 1 local unit to others, and any other facts

or matters concerning the operations of local units which the board may deem relevant." (Emphasis supplied)

The Attorney General has ruled that a member of a board of education of a school district may not simultaneously occupy the offices of township supervisor or township treasurer because of the incompatibility in the duties of the office.

"It would be impossible for any person to represent and protect the interests of both the township and the school district lying therein in connection with the allocation of millage by the county tax allocation board. Consequently, the Attorney General is of the opinion that the offices of township supervisor and township treasurer and the office of member of a school board embracing the particular township are incompatible."

O.A.G. No. 2675, 1955-1956, Vol. II, pages 405, 406.

A ruling has been made that there is an incompatibility between the office of township clerk and member of a school board in a school district of which the township is a part. O.A.G. No. 2692, 1955-1956, Vol. II, page 432.

The Attorney General has ruled in O.A.G. No. 4109, 1961-1962, page 574, that in view of possible contest between the local school district and the community college district for the allocation of millage within the 15 mill limitation, the offices of member of the local school board and member of the board of trustees of the community college district are incompatible.

These opinions rest upon the proposition that there is a conflict of interest in the representation of more than one local unit before the county tax allocation board in the division of balance of the net limitation tax rate between all local units. In the case of the same person occupying the office of member of a board of education of a local school district and the office of member of the intermediate board of education, a similar conflict of interest may arise as to representation and proper presentation in the division of the balance of the net limitation tax rate between all local units, including school districts and intermediate school districts. Where the same person occupies the two offices there is a divided loyalty on the part of the same person holding the offices of member of a board of education of a local school district and member of the intermediate board of education to further and defend the interest of the respective school districts in the vital matter of tax allocation. The conflict of interest is sufficient to make the two offices incompatible so that the same person may not hold both of them at the same time.

The aforesaid principle reflects the common law that the same person may not simultaneously occupy two incompatible offices. However, the legislature by clear and unequivocal statutory language may abrogate the common law principle to the extent that the same person may simultaneously occupy two incompatible offices. *Childs v. Moses*, 36 N.Y.S. 2d 574 (1942); 67 C.J.S. 134.

The legislature has not by clear and unequivocal statutory language in

the budget-fixing process for the intermediate school district abrogated the common law principle to the extent that the same person may simultaneously occupy the office of member of a board of education of a local school district within the intermediate district and office of member of the intermediate board of education.

The law is well settled that when a person accepts a second incompatible office he vacates the first office. *Weza v. Auditor General*, 297 Mich. 686 (1941).

It is, therefore, the opinion of the Attorney General that the same person may not simultaneously hold the office of member of a board of education of a local school district and the office of member of the intermediate board of education.

Since the two offices may not be held simultaneously, it becomes unnecessary for me to consider whether or not it is proper for a member of an intermediate board of education, who is also a member of a local board of education of a school district, to take part in matters which deal directly with a school district of which he is president of the board of education.

FRANK J. KELLEY,
Attorney General.

650519.1

PROPERTY TAXES: Drain Taxes—A township may spread drain taxes assessed against the township at large upon the taxable property within the township. The township board may provide for the payment of drain assessments at large in any year from the general or contingent fund of the township.

CONSTITUTION: 15-mill Limitation—Drain taxes at large, when levied against the taxable properties within the township, are general ad valorem taxes within the meaning of the tax limitation of Article IX, § 6, Michigan Constitution of 1963.

No. 4438

May 19, 1965.

Mr. Donald A. Burge
Prosecuting Attorney
County Building
Kalamazoo, Michigan

You have requested the opinion of this office relative to drain assessments at large pursuant to the provisions of the drain code of 1956,¹ and specifically, you desire an answer to the following questions:

1. May a tax be levied upon the assessable property within a township to cover the assessment of drain taxes at large against the township?

¹ Act No. 40, P.A. 1956, as amended, C.L.S. 1961, § 280.1, et seq.; M.S.A. 1960 Rev. Vol., § 11.1001, et seq.