legislature has granted boards of education the statutory authority to pay all or a portion of the premium on a policy of disability insurance that will furnish financial protection to their employees in cases of extended absence on account of sickness or accident.

FRANK J. KELLEY,
Attorney General.

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SCHOOL DISTRICTS: Board of Education—Teachers.

There is no legal prohibition against the same individual simultaneously serving as a member of a board of education in one school district and teaching in another school district.

No. 4598

April 11, 1969.

Hon. Allen F. Rush
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on a question which may be phrased as follows:

> Is there any legal prohibition against the same individual simultaneously serving as a member of a board of education in one school district and teaching in another school district?

This question necessitates consideration of two potentially relevant legal doctrines, incompatibility of public office and conflict of interest. I will first discuss incompatibility of public office.

An examination of Act 269, P.A. 1955, as amended, being M.S.A. 1968 Rev. Vol. § 15.3001 et seq.; M.C.L.A. § 340.1 et seq., known as the School Code of 1955, reveals no express statutory provision either prohibiting or authorizing the conduct in question. Thus, recourse must be had to the common law doctrine of incompatibility of public office.

Two public offices are incompatible and may not be simultaneously occupied by the same person when one office is subordinate to the other and subject to its supervisory power in some degree or when the functions of the two offices are inconsistent and repugnant to one another. Under the common law doctrine of incompatibility of public office, the acceptance of a second and incompatible public office serves to vacate the first public office. *Attorney General ex. rel. Moreland v. Common Council of the City of Detroit* (1897), 112 Mich. 145; *Weza v. Auditor General* (1941), 297 Mich. 686.

It is clear that a member of a board of education is holding a public office. In contrast, public school teachers are public employees. *Attorney General v. Board of Education of the City of Detroit* (1923), 225 Mich. 237. However, the incompatibility doctrine has been extended to cover public employment or position as well as public office. *Knuckles v. Board of Education of Bell County* (Ky. 1938), 114 S.W. 2d 511, and O.A.G. No. 4309, 1963-64, p. 459. Consequently, the question arises as to whether an in-

compatibility exists between the public positions of member of a board of education in one school district and teacher in another school district.

An examination of the nature of the duties of these two positions and a reading of the School Code of 1955, supra, conclusively demonstrates that no incompatibility exists in the sense of one public position being subordinate to the other. The teacher is hired and supervised by the board of education in the district where he teaches and upon which he does not serve. Further, there is no inherent inconsistency between the functions and duties of the two public positions. The teacher is under a contractual obligation to teach students in the district where he is employed. This function is in no way inconsistent with his legal duties as a board of education member in another school district.

Therefore, it is the opinion of the Attorney General that there is no incompatibility between the public positions of member of a board of education in one school district and teacher in another school district.

Turning to the relevant conflict of interest provisions, we must first examine Article IV, Section 10 of the 1963 Michigan Constitution which reads as follows:

> "No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof *which shall cause a substantial conflict of interest.* The legislature shall further implement this provision by appropriate legislation." (Emphasis supplied)

I had occasion to interpret Article IV, Section 10, supra, in O.A.G. No. 4555, issued April 12, 1967. That opinion held that the first sentence of Article IV, Section 10, supra, is self-executing and sets a standard of conduct that may not be diminished by legislation. It also held that the office of member of a board of education is a state office since education is a state function.[1]

Within this framework, we direct our attention to the contractual relationship between the teacher and the board of education in the school district where he teaches. It cannot be denied that the teacher has a direct, pecuniary interest in a teaching contract, whether it be the individual written contract of employment authorized by Section 569 of the School Code of 1955, supra, or the collective bargaining agreement authorized by Section 15 of Act 336, P.A. 1947, as last amended by Acts 379 and 397, P.A. 1965, being M.S.A. 1968 Rev. Vol. § 17.455(1) et seq.; M.C.L.A. § 423.201 et seq., known as the Public Employment Relations Act. Further, such a

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[1] Sec. 3 of Act 318, P.A. 1968; M.C.L.A. § 15.303; M.S.A. 1969 Cum. Supp. § 4.1700(23), purports to define the term "state officer" as used in Article IV, Sec. 10 of the Constitution and, in so doing, seeks to limit its application only to certain officers specifically named in the constitution. The constitutionality of this provision is doubtful (see *Richardson v. Secretary of State* (1968), 381 Mich. 304) but not in issue here as the legislature has enacted a companion conflict of interest law, Act 317, P.A. 1968, which does cover "public servants" not within the provisions of Article IV, Sec. 10. Thus school board members are subject to conflict of interest either under Act 317, P.A. 1968, or Article IV, Sec. 10 of the Constitution.

contract is a contract with the state since school districts are state agencies. *School District of the City of Lansing v. State Board of Education* (1962), 367 Mich. 591.

However, there must be a *conflict* of interest before Article IV, Section 10, supra, is violated. In the situation here under discussion, there is no *conflict* of interest. The teacher, in his capacity as member of the board of education, was elected to represent the interests of the qualified electors in the school district where he serves on the board of education, not the interests of the qualified electors in the school district where he teaches. Thus, there is no conflict between the interest of the teacher in his teaching contract with the school district where he teaches and his public duty to represent the qualified electors in the school district where he serves on the board of education.

Turning next to the teachers' collective bargaining agreement that the board of education member will be called upon to approve or reject, we must scrutinize this contract to see if it is marked by a constitutionally prohibited conflict of interest. As indicated above, it is a contract with the state since school districts are state agencies. However, it is clear that the board of education member has no direct interest in the contract since he teaches in another school district.

It could be argued that the school board member has an indirect pecuniary interest in the collective bargaining agreement he will pass on in the school district where he serves on the board of education. This indirect interest would flow from the possibility that, to the extent he approves high teachers' salaries in the school district where he serves on the school board, the board of education in the school district where he teaches would feel comparative and competitive pressures to also raise teachers' salaries.

The existence of such a possible indirect interest on the part of the board of education member in the collective bargaining agreement he passes on would be dependent upon a number of factors. Among these factors would be the geographical proximity, size, property tax base and prior patterns of collective bargaining concerning teachers of the two school districts involved. Thus, the basis for finding such an indirect interest on the part of the board of education member in the collective bargaining agreement, causing a substantial conflict of interest, is too speculative and tenuous to be persuasive. This remote possibility of an indirect interest in the collective bargaining agreement, not being legally prohibited, is left to the sound judgment of the electorate to be balanced against the possible educational expertise a teacher could provide in his capacity as member of a board of education.

It is the opinion of the Attorney General that having an individual serve as a member of a board of education in one school district and as a teacher in another school district does not result in any conflict of interest prohibited by Article IV, Section 10 of the 1963 Michigan Constitution.

The legislature has recently passed Act 317, P.A. 1968, being M.S.A. Curr. Mat. § 4.1700(51) et seq.; M.C.L.A. § 15.321 et seq. This statute deals with conflicts of interest in public contracts and includes school board members and public school teachers within its scope. A careful reading of Act 317, P.A. 1968, supra, reveals that serving on a school board and teaching

in another school district does not, by itself, render voidable either the individual's teaching contract or the teachers' collective bargaining agreement he will be passing upon as a school board member.

There remains for consideration the possibility that the teacher might belong to a collective bargaining organization in the school district where he teaches as such organizations are expressly authorized by Sections 9 and 11 of the Public Employment Relations Act. In addition, it is possible that in the school district where he serves on the board of education the collective bargaining organization representing the teachers may be affiliated with the same state organizational entity, the Michigan Education Association or the Michigan Federation of Teachers, that the collective bargaining organization is affiliated with in the school district where he teaches.

However, it must be noted that membership and participation in a collective bargaining organization is voluntary activity not required of a teacher by statute and is too remote and insubstantial to constitute a conflict of interest.

Thus, there is still no inconsistency or repugnancy between the legal duties of a teacher in one school district and a board of education member in another school district. This is not to say that the legislature could not, if it so desired, prohibit this dual holding of public positions by statutory enactment.

In conclusion, it is the opinion of the Attorney General that there is no legal prohibition against the same individual simultaneously serving as a member of a board of education in one school district and teaching in another school district.

FRANK J. KELLEY,
Attorney General.

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CREDIT UNIONS: Powers and duties.

State chartered credit unions possess implied powers to extend a line of credit to credit union members for provident or productive purposes, to permit its members to utilize drafts in unstated amounts, but limited by imprint thereon to a stated maximum, and to invest the funds of the credit union in a housing cooperative irrespective of whether the housing would be limited to occupancy by credit union members.

A state chartered credit union does not possess the power, either express or implied to disburse, directly from the funds of its members for the regular payment of utility bills and insurance premiums.

No. 4650

May 9, 1969.

Mr. Robert P. Briggs
Commissioner of Banking
Financial Institutions Bureau
Davenport Building
Lansing, Michigan

You have asked whether the enumerated powers of a credit union include the power to: