

4. In response to your fourth question, a plain reading of Act 77, P.A. 1960, supra, is sufficient. The governor is authorized to appoint 13 members to the Michigan Higher Education Assistance Authority, including the three public representatives and one representative from the secondary schools, such appointments to be made so that the terms of one-fourth of the members of the Authority shall expire each year.

Therefore, it is my opinion that the governor is authorized to appoint the 13 members of the Michigan Higher Education Assistance Authority as provided in Sec. 2 of Act 77, P.A. 1960, as amended by Act 218, P.A. 1964, supra, and for each person so appointed to specify a term of office to expire at such time so that the terms of one-fourth of the members of the Authority shall expire each year.

FRANK J. KELLEY,
Attorney General.

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PUBLIC OFFICERS AND OFFICES – INCOMPATIBILITY: Township
board of review and board of education.
SCHOOLS: Township Board of Education, Member of.
TOWNSHIPS: Board of Review.

The offices of member of the township board of review and member of the local board of education in the same township are incompatible if held by the same person.

No. 4307

June 30, 1964.

Honorable Paul M. Chandler
State Representative
33050 Five Mile Road
Livonia, Michigan

You have requested my opinion on a question stated by you as follows:

“May the same citizen serve simultaneously as a member of the Township Board of Review and as a member of a Board of Education within the same Township?”

No constitutional or statutory provision has been found directly prohibiting the simultaneous holding of the two offices mentioned in your question by the same person; therefore, resort must be had to the applicable principles of the common law. Under the common law duality of office holding per se was not unlawful but came under scrutiny if the nature of the two offices was such as to make them incompatible in that an undertaking by the same person to faithfully perform the duties of each would or might be contradictory. This is but recognition of the ancient biblical proverb that a man cannot serve two masters.

The rule of incompatibility has been often recognized and applied by the Attorney General. In Opinion No. 927 issued by Attorney General Roth on April 27, 1949 the applicable rule was stated by him in this way:

“At common-law offices are not incompatible unless their functions are inconsistent. Incompatibility is not simply a physical impossibility

to discharge the duties of both offices at the same time; it is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt of a person to discharge faithfully and impartially the duties of both. The common-law rule is that the acceptance by a public officer of another office which is incompatible with the first thereby vacates the first office; that is, the mere acceptance of the second incompatible office per se terminates the first office as effectively as a resignation." *O.A.G. 1949-1950, page 204.*

Similar statements are to be found in the following published opinions of the Attorney General:

Opinion No. 2085 issued by Attorney General Kavanagh on May 2, 1955, O.A.G. 1955-56, Vol. 1, page 228;

Opinion No. 3028 issued by Attorney General Kavanagh on December 27, 1957, O.A.G. 1957-58, Vol. 1, page 555;

Opinion No. 3359 issued by Attorney General Adams on June 12, 1959, O.A.G. 1959-60, Vol. 1, page 113.

To determine whether the prohibited incompatibility exists between the offices of township board of review and local board of education in the township, where membership is simultaneously held on each board by one person, it is necessary to ascertain the duties imposed upon the officeholder.

The township board of review is created by Section 28 of Act 206 P.A. 1893 as amended, being the General Property Tax Act.¹ Under existing statutes the township board of review does not function continuously but holds only two meetings a year. The first meeting of the board is required to be held on the Tuesday next following the first Monday in March as prescribed by Section 29 of the General Property Tax Act.² The second meeting of the board is required to be held on the second Monday in March as prescribed by Section 30 of the General Property Tax Act.³

As its name indicates, there is a board of review in each township in the state. [Cities have a board of review as prescribed by their charter and each village also has its own board of review for the village roll.] The elected township supervisor is the township assessing officer and under the Michigan system it is his responsibility to list and value separately on the

¹ The General Property Tax Act as amended is codified as C.L. 1948 and C.L.S. 1961 § 211.1 et seq., M.S.A. 1960 Rev. Vol. and 1963 Cum. Supp § 7.1 et seq. Section 28 was last amended by Act 275 P.A. 1964, not given immediate effect but to become effective on August 28, 1964.

² Section 29 is codified as C.L. 1948 and C.L.S. 1961 § 211.29, M.S.A. 1960 Rev. Vol. § 7.29. Section 29 was last amended by Act 275 P.A. 1964, such amendment not being pertinent to the discussion in this opinion. Act 275 P.A. 1964 was not given immediate effect and becomes effective August 28, 1964.

³ Section 30 is codified as C.L. 1948 and C.L.S. 1961 § 211.30, M.S.A. 1960 Rev. Vol. § 7.30. Section 30 was last amended by Act 275 P.A. 1964, the amendment not being significant here. Act 275 P.A. 1964 was not given immediate effect and becomes effective August 28, 1964.

assessment roll each item of property in his township.⁴ At the first meeting of the board of review held on the Tuesday next following the first Monday in March the board is required under the General Property Tax Act (Section 29) to examine and review the assessment roll as prepared by the township supervisor and the board of its own motion, or on sufficient cause being shown by any person, shall add to the assessment roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll, and shall correct all errors in the names of persons, in the descriptions of property, and in the assessment and valuation of property shown on the roll and shall cause to be done whatever else may be necessary to make the assessment roll comply with the provisions of the General Property Tax Act. It is at this first meeting of the township board of review that the board has the power and duty to change any valuation of the items of property separately shown on the assessment roll and it is its function at this first meeting to equalize the individual assessments within the township so that all taxable property is assessed on the roll by the same method or mode of assessment at true cash value.

Auditor General v. Stone, 190 Mich. 93;
O.A.G. No. 3602, supra.

In exercising its reviewing function at its first meeting, the township board of review is without power to make horizontal or "across the board" equalization adjustments in the assessed value of property in an attempt to correct alleged inequities between different classes of property or to raise or lower percentage-wise the assessed valuations of all property in the township.

Hayes v. City of Jackson, 267 Mich. 523;
City of Negaunee v. State Tax Commission, 337 Mich. 169.

At the second meeting of the township board of review held on the second Monday in March, the responsibility of the board and the object of the meeting is to correct any assessment upon complaint of the owner of the property and cause shown.

Auditor General v. Stone, supra.

From the foregoing resume of the duties and responsibilities of members of the township board of review it clearly appears that any person serving as a member of that board cannot exercise an unbiased judgment or perform a disinterested service if at the same time this person is a member of the local board of education. As a member of the school board such an individual knows that the public schools in his township receive their operating revenues from current tax levies plus such additional operating millage as may have been voted. He also knows that taxes result from the

⁴ Under the Constitution of 1908, Art. X, Sec. 7, assessments of property for tax purposes were to be at its cash value. The corresponding provision in the Constitution of 1963 is found in Art. IX, Sec. 3, which provides that after January 1, 1966 property shall not be assessed for tax purposes in excess of 50% of its true cash value. The assessing process is discussed at length in Opinion No. 3602 issued October 2, 1961 by Attorney General Adams. O.A.G. 1961-62, page 176. See also *Champney*—"Reviewing Tax Assessments"—40 Mich. Bar Journal No. 4, page 11, April 1961.

application of tax rates and voted millage to the assessed valuation of property in the township. Thus higher tax returns tend to flow from higher assessed valuations. While it is true that the township board of review at its first meeting must deal with the several parcels or items of real or personal property on an individual basis, there will be many situations before the board where a member may exert his influence to increase assessed values. For example, there may be a factory or warehouse in the township which is also within the school district where an opportunity will be present to adjust in the township board of review the assessed value of personal property such as tools, dies and fixtures or a warehouse inventory. It is obvious that the definition of "cash value" as it appears in the General Property Tax Act⁵ permits a wide range in the judgment of values. Our Supreme Court has many times held, under the Constitution and laws of this State, that assessments of property for tax purposes will not be disturbed by the Court unless they are so at variance with the undisputed facts as to be in the eyes of the law a fraud on the taxpayer.

Templin v. Township of Nottawa, 362 Mich. 257, 260.

It is the opinion of the Attorney General that the offices of member of the township board of review and member of the local board of education within the same township are incompatible if held by the same person. To the extent that O.A.G. 1941-42, No. 19848, p. 141 and O.A.G. 1943-44, No. O-2168, p. 731, are inconsistent with this opinion, they are no longer to be followed.

FRANK J. KELLEY,
Attorney General.

⁵ Section 27 of the General Property Tax Act, supra, is pertinent to the extent of the following definition: "The words 'cash value,' whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale." Section 27 was amended by Act 275 P.A. 1964 effective August 28, 1964, by adding a new sentence not pertinent herein.