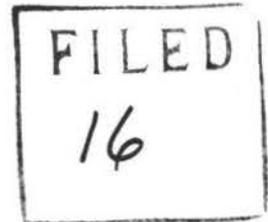


SCHOOLS: The positions of director of a special
SCHOOL DISTRICTS: school district and director of a six-
CONFLICT OF INTEREST: director district which is a component
part of that special school district are
incompatible and one person may not hold both positions at the
same time.

OPINION NO. 16

March 20, 1974

Dr. Arthur L. Mallory
Commissioner of Education
Department of Education
Sixth Floor, Jefferson Building
Jefferson City, Missouri 65101



Dear Dr. Mallory:

This official opinion is in response to your request for a ruling on the following questions:

"Would it be legally permissible for a member of a component six-director school district board to also serve as a member of the board of the Special School District of St. Louis County? In other words, are these offices incompatible?"

You advise in your opinion request that an individual in St. Louis County, currently serving as a director of a St. Louis County school district, is a candidate for membership on the board of education of the Special School District of St. Louis County. Should he be elected to the board of the Special School District, he would like to continue serving on both school boards at the same time.

It is a settled principle of law that unless the Constitution, a statute or the common law prohibits the holding of two public offices by one individual, an individual may hold two offices simultaneously. United States v. Saunders, 120 U.S. 126 (1887); State ex rel. Zevely v. Hackmann, 300 Mo. 59, 254 S.W. 53 (Banc 1923); State ex rel. Koehler v. Bulger, 289 Mo. 441, 233 S.W. 486 (Banc 1921); State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636 (Banc 1896); and Bruce v. City of St. Louis, 217 S.W.2d 744 (St.L.Ct.App. 1949). Since there are no constitutional or statutory prohibitions in Missouri against the same person serving on the board of a six-director school district within the boundaries of a special school

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district and, at the same time, serving on the board of the special school district, the principal issue posed by your request is whether the two board positions are incompatible under the common law.

The common law rule was stated in the case of State ex rel. Walker v. Bus, supra, as follows:

". . . At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two,--some conflict in the duties required of the officers, as where one has some supervision of the others, is required to deal with, control, or assist him. It was said by Judge Folger (People v. Green, 58 N. Y. 295): 'Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that "incompatibility" from which the law declares that the acceptance of the one is the vacation of the other. The force of the word in its application to this matter is that, from the nature and relations to each other of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one towards the incumbent of the other. Thus, a man may not be landlord and tenant of the same premises. He may be landlord of one farm, and tenant of another, though he may not at the same hour be able to do the duty of each relation. The offices must subordinate, one the other, and they must per se have the right to interfere, one with the other, before they are incompatible at common law.' . . ." Id. at 639-640.

Two offices are intrinsically incompatible at common law when:

- (a) One is subordinate to the other;

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- (b) One has supervisory powers over the other;
- (c) One audits the other's accounts; or
- (d) One has power to appointment, or power of removal over the other.

See State ex rel. Klick v. Wittmer, 144 P. 648 (Mont. 1914) and Attorney General's Opinion No. 167, O'Brien, April 19, 1963, copy enclosed.

A special school district is a district composed of one or more six-director school districts ("component districts") with the limited purposes of educating and training handicapped and severely handicapped children and of providing vocational education. Sections 178.640, et seq., V.A.M.S. (effective until July 1, 1974); Sections 162.815, et seq., V.A.M.S. (effective after July 1, 1974). There is nothing specifically provided in the statutes which states that a person may not be a director of both a special school district and a six-director school district which is a component part of a special school district. However, in examining the duties and powers of a special school district, we conclude that there may be occasions in which conflicts between the two boards would arise.

In Section 162.880, V.A.M.S. (effective after July 1, 1974), a special school district is given the power to:

". . . established programs for any such [handicapped or severely handicapped] children within any school district included in the special district in classrooms furnished by the school district, . . ."

Section 178.710, V.A.M.S. (effective until July 1, 1974), contains a similar provision. If a special district decided to offer courses in a component district's classroom, the local district must cooperate, but certain practical details would have to be worked out between the two districts. For example, the special district might believe that the classroom offered was not satisfactory, or that it was not being adequately heated or maintained. Disputes could arise when one district or the other decided that continued use of the classroom was undesirable, either because the component district wanted the classroom back or because the special district wanted to move the class elsewhere. In any of these cases, a person who was on both school boards would have divided loyalties and could not properly represent the interests of either. A conflict would exist.

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Further, Section 162.905, V.A.M.S., provides as follows:

"Any special school district may, at the discretion of its board of education and upon the request of component local districts, serve as a coordinating agency for cooperative activities including but not limited to group purchasing, centralized computer services, audio-visual services and library services for the school districts served by the special district."

The decision of the members of the board of education of the special district concerning whether or not to authorize the special district to serve as a coordinating agency for cooperative activities may be colored if any of the directors is also a director of the component district which has made the request. It would be difficult for any such decision to be made at arm's length if the same person sat on both boards.

Thus, a special district and a component district have overlapping jurisdictions, and the law requires the two districts to work together. We believe that the potential practical problems outlined above and others which may also arise between the two districts could cause considerable tensions and disagreement, and one person could not properly represent both sides. Thus, the offices are incompatible.

CONCLUSION

It is, therefore, the opinion of this office that the positions of director of a special school district and director of a six-director district which is a component part of that special school district are incompatible and one person may not hold both positions at the same time.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 167
4-19-63, O'Brien