

Opinion No. 105.**Clerk of School District—Duties—
Employee—Dual Employment**

HELD: There is no incompatibility or official status attached to the employment of a clerk of a school district that would prevent said clerk from working for the school district in another capacity, particularly that of a school bus driver or janitor.

December 8, 1954.

Mr. Robert J. Webb
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Webb:

You have requested my opinion upon the following question:

“May the clerk of a school district work for the school district in another capacity, particularly that of a school bus driver or janitor?”

There is no constitutional or statutory prohibition preventing such employment, therefore, case law must be resorted to in order to determine where there is any incompatibility or official status of the position that would prevent such employment.

Section 75-1621, R. C. M., 1947, directs the school trustees of each school district to choose “. . . a competent person, not a member of the board, as clerk . . .” The clerk’s duties are set

forth in Sections 75-1901 through 75-1905, R. C. M., 1947. Section 75-1901, R. C. M., 1947, provides as follows:

"The duties of the district clerk shall be as follows:

"To attend all meetings of the board of trustees; but if he shall not be present, the board of trustees shall select one of their number as clerk, who shall certify the proceedings of the meeting to the clerk of the district to be recorded by him. He shall keep his record in a book to be furnished by the board of trustees, and he shall preserve a copy of all reports made to the county superintendent, and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successors."

The word "clerk" as employed in the above-quoted statute denotes and refers to those persons whose duties are principally clerical, in which position they are not required to exercise judgment and discretion with reference to official or departmental work.

While the clerk is required to use intelligence, judgment and discrimination, the title clerk has generally been associated with clerical duties as contradistinguished from those of an administrative or executive character.

"A mere clerk is not an officer . . . The title clerk is properly that of an employee." *U. S. v. Smith*, 124 U. S. 525, 31 L. Ed. 534, 8 S. Ct. 595.

A clerk of a school district would not be considered an officer under the definition as laid down in *State ex rel. Barney v. Hawkins*, 79 Mont. 506, 516, 257 Pac. 411, as the position is one held at the pleasure of the school trustees; one that has no permanency or continuity in employment; and further, the duties of the clerk of a school district are merely clerical.

The clerk of the school district, further, has no control or supervisory power over the school bus drivers and janitors, nor does he pay the wages of these employees.

With these tenets set forth, it is obvious that since the clerk of the school district is not an officer, it is my opinion that there is no incompatibility or official status attached to his employment that would prevent

him from working for the school district in another capacity, particularly that of a school bus driver or janitor.