

**Teachers—Schools—Trustees—Clerk of School Board.**

The School Board in its discretion may employ a teacher to act as Clerk of the Board and also to teach school.

Miss May Trumper,  
Superintendent of Public Instruction,  
Helena, Montana.

My dear Miss Trumper:

You have asked whether a teacher may legally act as Clerk of the School Board of a district which employs her as a teacher.

Section 1077, Revised Codes of 1921, provides, in part, as follows:

"It shall be the duty of the teacher of every public school in this state to keep, in a neat and businesslike manner, a daily register in such form and upon such blanks as shall be prepared by the Superintendent of Public Instruction, and no Board of Trustees shall draw any warrant for the salary of any teacher for the last month of his services in the school at the end of any term or year, until they shall have received a certificate from the District Clerk that the said register has been properly kept, the summaries made, and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done."

Under this section, it is primarily the duty of the Clerk to see that the teacher has kept her register in a neat and businesslike manner and she is not entitled to draw her salary for the last month of her services until it is shown satisfactorily that this has been done.

The general rule of law is that one person cannot hold two offices where the duties are incompatible. Offices are considered incompatible when one has power of removal over the other (29 Cyc. 1382; Attorney General v. Connell, 112 Mich. 145, 37 L. R. A. 211); also when one is in any way subordinate to the other (State v. Jones, 130 Wis. 572, 110 N. W. 431); also when one has power or supervision over the other or when the nature and duties of the two offices are such as to make it improper from consideration of public policy for one person to retain both (Mechem on Public Officers, Sec. 422; State v. Anderson, 155 Ia. 271, 136 N. W. 128.)

In the case of State ex rel. Klick v. Wittmer, 50 Mont. 22, the Supreme Court held that the office of Alderman and that of Purchasing Agent of the city were incompatible offices.

The Board can, of course, satisfy itself that the teacher has performed the duties required of her in regard to her register by personally checking the matter.

It is, therefore, my opinion that, while the duties required of the Clerk, in a general way, would seem to be incompatible with the duties as teacher, yet, inasmuch as the School Board has supervision over both the Clerk and the Teacher, it may, in its discretion, employ a Teacher to act as Clerk of the School Board and also teach school.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.