

OFFICIAL OPINION NO. 72

July 26, 1946.

Mrs. Eleanor B. Snodgrass,
Director Probation,
State Probation Department,
State House,
Indianapolis 4, Indiana.

Dear Mrs. Snodgrass:

Your letter of July 17 requested an official opinion upon substantially the following question:

Would it be legal for the school attendance officer for Whitley County to be appointed probation officer of the Whitley Circuit Court, and receive compensation for each service.

Section 9 of Article 2 of the Constitution of Indiana prohibits the same person holding two lucrative offices at the same time. As to whether or not a person is an officer depends upon the person being empowered to exercise some part of the sovereign power of government.

State Conservation Dept. v. Nattkemper (1927),
86 Ind. App. 85, 156 N. E. 168;

State *ex rel.* Wickens v. Clark (1935), 208 Ind.
402, 196 N. E. 234;

Harrell v. Sullivan (1942), 220 Ind. 108, 40
N. E. (2d) 115;

Tucker v. State (1941), 218 Ind. 614.

It has been held by the Indiana Supreme Court that firemen and policemen are employees and not public officers even though they enforce the state laws.

City of Huntington v. Fisher (1942), 220 Ind.
83, 85;

Freyermuth v. State *ex rel.* Burns (1936), 210
Ind. 235, 245.

In the case of Featherngill v. State *ex rel.* Wright the Appellate Court of Indiana did hold that a truant officer was

a public officer, but this case did not consider the question in the light of the requirement of the power to exercise some part of the sovereign power of government, and it has probably been overruled by subsequent cases above cited.

In any event, in view of the authorities holding firemen and policemen are employees, it is difficult to see how it could be held that a probation officer is a public officer and exercising any of the sovereign powers of government.

Under the above authorities, it is my opinion that the same person may be appointed as attendance officer by the proper authorities of the school corporation, and also as probation officer by the Judge of the Circuit Court, and to receive compensation for each service. It is assumed that the Judge and school corporation would cooperate in the matter of work to be done so that there would be no conflict between the two employers.

OFFICIAL OPINION NO. 73

July 26, 1946.

Hon. Clement T. Malan,
State Superintendent of Public Instruction,
State House.
Indianapolis, Indiana.

Dear Doctor Malan:

Your letter of July 19, 1946, has been received in which you request an official opinion on the following questions:

"1. Does the Textbook Commission have the obligation of adopting textbooks, where satisfactory textbooks are submitted, in every subject that is taught in every grade in every school in the State of Indiana?

"2. If the answer to question 1 is in the affirmative, would the same answer apply even though a subject might be taught in only one grade and in only one school?

"3. If the answer to question 1 is in the negative, what Board, Commission or other authority has the responsibility of determining what subject or subjects for which textbooks must be adopted?"