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;

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 prob-
ably 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 com-
ensation 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 obliga-
tion of adopting textbooks, where satisfactory text-
books 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?"