

1980-1981 Ky. Op. Atty. Gen. 2-174, Ky. OAG
80-234, 1980 WL 103047 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

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April 24, 1980

Mr. Tipton Baker
Harlan County Judge/Executive
P.O. Box 944
Harlan, Kentucky 40831

Dear Judge Baker:

You request an opinion as to whether a person may be a school teacher and serve on the water board, or a postmaster and serve on the water board.

A county water district is a political subdivision of the Commonwealth, a public corporation. [Louisville Ext. Water Dist. v. Diehl Pump & Supply Co., Ky. 246 S.W.2d 585 \(1952\)](#). See also [KRS 74.020](#), and [Valla v. Preston Street Road Water Dist. #1, Ky., 395 S.W.2d 772 \(1965\)](#). A teacher is an employee of the particular school district, which is a political subdivision of the state. See KRS Chapter 160. Thus we find no constitutional nor statutory incompatibility where a person is a school teacher and a member of the water board at the same time. See [KRS 61.080](#) and [Sec. 165, Kentucky Constitution](#). There would be no common law or practical incompatibility, provided that the person can fill, at the same time, those two positions with care and ability and with impartiality and honesty. [Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122 \(1917\)](#) 126.

Next you ask whether or not there would be any in-

compatibility in connection with a person holding the position of postmaster and water board member.

Here again there is no incompatibility as relates to [Section 165, Kentucky Constitution](#) and [KRS 61.080](#).

[Section 237 of the Kentucky Constitution](#) reads:

“No member of Congress, or person holding or exercising an office of trust or profit under the United States, or any of them, or under any foreign power, shall be eligible to hold or exercise any office of trust or profit under this Constitution, or the laws made in pursuance thereof.”

We have been informed that Harlan County has one first class post office in the city of Harlan, and 34 4th class post offices throughout the county. Several of the 4th class offices are located in grocery stores.

It is our opinion that [Section 237 of the Constitution](#) would prohibit the postmaster of the city of Harlan from being on the water board, since the postmaster position of a 1st class office would be an “office of trust”; and a board member is an office of trust under Kentucky law. See [Howard v. Saylor, 305 Ky. 504, 204 S.W.2d 815 \(1947\)](#) 817, relating to the five elements of an “office”. The court in [Commonwealth Ex Rel. Hancock v. Clark, Ky., 506 S.W.2d 503 \(1974\)](#) held that a 4th class postmaster was not holding an “office of trust” under that section. However, the court said that considering various federal positions in terms of [Section 237](#) would have to be done on a case by case basis, depending on the nature and importance of the office in question. When considering the nature of a 1st class office operation, the number of people served, the number of employees involved, and the supervisory work of the postmaster in running the operation under federal law and regulations, we believe the courts, if presented with the question, would hold that the position is an “office of trust” under [Section 237 of the Constitution](#).

Sincerely,
*2 Steven L. Beshear
Attorney General

By: Charles W. Runyan
Assistant Deputy Attorney General

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