November 29, 1994

OPINION NO. 94-080

The Honorable R. Kelly Ormsby, III
Paulding County Prosecuting Attorney
102B South Williams St.
P.O. Box 377
Paulding, Ohio 45879

Dear Prosecutor Ormsby:

You have requested an opinion concerning the simultaneous holding of the positions of physician and member of the board of county hospital trustees of a county hospital. Specifically, you wish to know the following:

1. May a physician serve as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients?

2. May a physician who serves as a county coroner or health commissioner of a general health district serve as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients?

A Physician May Not Serve as a Member of the Board of County Hospital Trustees of a County Hospital that Authorizes Him to Admit and Treat Patients

Resolution of your questions turns on whether a conflict of interest prohibits a physician from serving as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients. It is a well-settled principle that "[a] public servant may not simultaneously hold an additional position which would subject him or her to divided loyalties and conflicting duties or to the temptation to act other than in the best interests of the public." 1989 Op. Att'y Gen. No. 89-037 at 2-164; *see State ex rel. Taylor v. Pinney*, 13 Ohio Dec. 210, 212 (C.P. Franklin County 1902) ("[t]he self interest of the public official and the public interests which he represents, must not be brought into conflict"); 1973 Op. Att'y Gen. No. 73-043 at 2-167 and 2-168 ("[a] public officer must be beyond temptation and he should not be in a position to profit from his public office. His position is one of a fiduciary nature to the community which requires that all his public decisions be completely objective"); 1970 Op. Att'y Gen. No. 70-168 at 2-336 (a public

servant "owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public" (overruled on other grounds by 1981 Op. Att'y Gen. No. 81-100)). A conflict of interest occurs when a person's "responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to influences which may prevent his decisions from being completely objective." 1980 Op. Att'y Gen. No. 80-035 at 2-149; *see also State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344 (Ct. App. Butler County 1934).

An examination of the duties of a member of the board of county hospital trustees of a county hospital discloses the existence of a conflict of interest. Pursuant to R.C. 339.06(A), a board of county hospital trustees is vested with the operation of a county hospital:

> The board of county hospital trustees shall, upon completion of construction or leasing and equipping of the county hospital, assume and continue the operation of such hospital. The board shall have the entire management and control of the hospital, and shall establish such rules for its government and the admission of persons as are expedient.

See 1952 Op. Att'y Gen. No. 1126, p. 97. A board of county hospital trustees thus is required to regulate all of the activities that occur at a county hospital, including the granting or revocation of professional privileges at the hospital. *See generally* R.C. 3701.351(A) ("[t]he governing body of every hospital shall set standards and procedures to be applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges").

Accordingly, a physician granted the privilege to admit and treat patients at a county hospital is under the supervision and control of the board of hospital trustees. *Cf.* 1958 Op. Att'y Gen. No. 1742, p. 93 at 94 ("[t]here can be no doubt that the power to remove is a complete check of one [position] upon the other"). Because a member of the board of county hospital trustees may be required to discuss and vote on matters that directly relate to the performance of a physician's duties at the hospital, a member of the board of county hospital trustees who also serves as a physician authorized to admit and treat patients at the county hospital may be subject to influences that may prevent him from making completely objective, disinterested decisions in his capacity as a county hospital trustee. *Cf.* 1991 Op. Att'y Gen. No. 91-036 at 2-196 (the president pro tempore of the legislative authority of a village "may be influenced in his vote on a proposal to construct, repair, or maintain a state highway, if the proposal would affect his duties as a bituminous plant inspector in the Department of Transportation").

Although a physician who serves as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients is subject to a conflict of interest, prior opinions of the Attorneys General have determined that the mere possibility that an individual is subject to a conflict of interest does not automatically prohibit the simultaneous holding of two positions. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-039 at 2-155; 1979 Op. Att'y Gen. No. 79-111 at 2-372. Instead, each potential conflict of interest should be considered on its particular facts, and

"[w]here possible conflicts are remote and speculative, common law incompatibility or conflict of interest rules are not violated." Op. No. 79-111 (syllabus, paragraph three). Factors used in determining the immediacy of a conflict of interest include:

> the degree of remoteness of a potential conflict, the ability or inability of an individual to remove himself from the conflict, whether the individual exercises decision-making authority in both positions, whether the potential conflict involves the primary functions of each position, and whether the potential conflict may involve budgetary controls.

Id. at 2-372.

With respect to your specific inquiry, several of these factors weigh against finding that a physician may serve as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients. It is likely that a member of the board of county hospital trustees who also is a physician authorized to admit and treat patients at the county hospital will be required to discuss and vote frequently on matters that will affect or relate to the performance of his duties as a physician at the hospital. The supervision and control of the operation of the hospital is the primary duty of the board of county hospital trustees. In discharging such duty, the board exercises decision-making authority. Finally, since the conflict of interest is not remote and involves the primary duty of the board of county hospital trustees, a member of the board would, as a practical matter, be unable to properly discharge his duties as a member of the board if he removed himself from any discussions or votes that concern or affect his professional privileges as a physician at the county hospital.

It thus appears that a physician who serves as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients is subject to a conflict of interest that is not remote and speculative. Accordingly, a physician may not serve as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients. *See also* 1969 Op. Att'y Gen. No. 69-056 (syllabus, paragraph two) ("[i]t is incompatible for a physician to serve simultaneously as chief of staff and on the board of county hospital trustees"); 1958 Op. No. 1742 (syllabus) ("[t]he provisions of Section 339.06, Revised Code, make the office of member of the board of county hospital trustees incompatible with the position of employee in the county hospital"); *cf.* 1973 Op. Att'y Gen. No. 73-097 (syllabus) ("[a] member of a board of health may not, at the same time, be employed by the board as a part-time physician").

A Physician Who Also Is a County Coroner or Health Commissioner of a General Health District May Not Serve as a Member of the Board of County Hospital Trustees of a County Hospital that Authorizes Him to Admit and Treat Patients

Your second question asks whether a physician who serves as a county coroner or health commissioner of a general health district may serve as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients. Insofar as a physician may not serve as a member of the board of county hospital trustees of a county hospital that

authorizes him to admit and treat patients, a physician who serves as a county coroner or health commissioner of a general health district may not serve as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients.

Conclusion

In light of the foregoing, it is my opinion and you are hereby advised as follows:

1. A physician may not serve as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients.

2. A physician who serves as a county coroner or health commissioner of a general health district may not serve as a member of the board of county hospital trustees of a county hospital that authorizes him to admit and treat patients.

Respectfully,

LEE FISHER
Attorney General

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SYLLABUS: 94-080

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