April 10, 1996

OPINION NO. 96-022

The Honorable Robert D. Rinfret
Holmes County Prosecuting Attorney
91 South Monroe Street
Millersburg, Ohio 44654

Dear Prosecutor Rinfret:

I am in receipt of your letter asking whether a village mayor, who by law is a member of the district advisory council of a general health district, may serve on the board of health of the same general health district.

It is my understanding that the general health district in question is comprised, as provided in R.C. 3709.01, of all the townships and villages in your county. As further provided by law, the mayor of the village involved is a member of the district advisory council of the general health district, although at times an alternate sits in his stead. R.C. 3709.03. The duties of the district advisory council include making original appointments to the board of health and appointments to vacancies on the board. R.C. 3709.02(A) and (D); R.C. 3709.03; R.C. 3709.35. The district advisory council reviews the annual and special reports of the board of health, makes recommendations to the board, and has authority to disapprove any fees established by the board. R.C. 3709.03(A); R.C. 3709.09(A).

It is a long established principle that a board with authority to make appointments to a particular position may not appoint one of its own members to that position. *State ex rel. Louthan v. Taylor*, 12 Ohio St. 130, 134 (1861). In 1936 Op. Att'y Gen. No. 5114, vol. I, p. 71 (syllabus, paragraph 4), one of my predecessors applied this principle to the same question you have presented and concluded: "A member of the district advisory council of a general health district is ineligible to appointment as a member of the district board of health of the said health district." The opinion further noted that the positions of district advisory council member and board of health member are incompatible because an individual in both positions would be required to review his own reports and make recommendations to himself. *Id.* at 76; *see also State ex rel. Hover v. Wolven*, 175 Ohio St. 114, 116-118, 191 N.E.2d 723, 726 (1963) (embracing the common law principle that offices are incompatible when one is subordinate to or a check on the other or when the duties are inherently inconsistent).

The pertinent statutes governing general health districts are substantially the same as when considered in 1936 Op. No. 5114. The determination of compatibility questions continues to be grounded in the principles enunciated in the *Taylor* and *Wolven* cases. *See, e.g.*, 1994 Op. Att'y Gen. No. 94-062 at 2-303; 1986 Op. Att'y Gen. No. 86-060; 1979 Op. Att'y Gen. No. 79-086. I find, therefore, that the reasoning of my predecessor in 1936 Op. No. 5114 continues to be persuasive and I concur that a district advisory council member may not serve on the board of health. The fact that an alternate may sit in the mayor's place on the district advisory council does not alter this conclusion. The prohibition explained in *Taylor* and 1936 Op. No. 5114 is against an appointing authority appointing any of its own members to a position, regardless of whether that member actually participates in the appointment process. R.C. 3709.03 provides that the legislative authority of a village "may select an alternate from among themselves to serve if...the chief executive... is unable to attend any meeting of the district advisory council." The statute does not provide, however, that the use of an alternate removes the mayor from the council. Accordingly the council may not appoint the mayor to a position on the board of health.

It is, therefore, my opinion, and you are hereby advised that the mayor of a village, who pursuant to R.C. 3709.03 is a member of the district advisory council of a general health district, may not serve on the board of health of that general health district. (1936 Op. Att'y Gen. No. 5114, vol. I, p. 71, approved and followed).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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Millersburg, Ohio 44654

SYLLABUS: 96-022

The mayor of a village, who pursuant to R.C. 3709.03 is a member of the district advisory council of a general health district, may not serve on the board of health of that general health district. (1936 Op. Att'y Gen. No. 5114, vol. I, p. 71, approved and followed).