January 7, 1997

OPINION NO. 97-003

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
117 East Columbus, Suite 200
Bellefontaine, Ohio 43311-2093

Dear Prosecutor Heaton:

I have received your letter asking whether the board of county commissioners may appoint the county sheriff to fill a vacancy on the county children services board. The vacancy arose as a result of Sub. H.B. 274, 121st Gen. A. (1996) (eff. Aug. 8, 1996), which amended R.C. 5153.05 and 5153.08 to eliminate the requirement that the juvenile judge, or the judge's appointee, serve as a member of the board and to provide, instead, for the board of county commissioners to appoint an additional member. *See also* Sub. H.B. 274, 121st Gen. A. (1996) (eff. Aug. 8, 1996) (section 14, uncodified). You have indicated that the county children services board believes that appointing the sheriff to the county children services board may result in a conflict because the agencies work together on many investigations involving child abuse.

It is a general principle of common law that an individual may not hold two public positions if one is subordinate to or a check upon the other, or if the individual would be subject to divided loyalties and conflicting duties. *See, e.g., State ex rel. Hover v. Wolven*, 175 Ohio St. 114, 191 N.E.2d 723 (1963); *State ex rel. Attorney General v. Gebert*, 12 Ohio C.C. (n.s.) 274 (Cir. Ct. Franklin County 1909); *Pistole v. Wiltshire*, 22 Ohio Op. 2d 464, 189 N.E.2d 654 (C.P. Scioto County 1961). In order to determine whether prohibited conflicts of interest exist, it is necessary to examine the powers and duties of a member of the county children services board and of the sheriff.

Let us consider, first, the responsibilities of a member of the county children services board. A county children services board is a type of public children services agency. R.C. 2151.011(B)(25). It is an agency of the county, consisting of members appointed by the board of county commissioners. R.C. 5153.08; R.C. 5135.15; *see also* 1989 Op. Att'y Gen. No. 89-084. The county children services board meets at least once a month. R.C. 5153.09. Its members are considered to be public officers. *See* 1963 Op. Att'y Gen. No. 561, p. 573. They serve without compensation but are entitled to their necessary expenses and, with appropriate authorization, may attend meetings or conventions at county expense. R.C. 325.20; R.C. 5153.09.

The county children services board is responsible for providing care for children who are in need of public care or protective services. The board is required to investigate children alleged to be abused, neglected, or dependent; to enter into agreements regarding the custody, care, or placement of children and, in appropriate circumstances, to accept custody; to provide temporary emergency care, foster homes, or a county children's home; and to provide various other services relating to the well-being of children. R.C. 5153.16; *see also* R.C. 5153.161- .165; R.C. 5153.21-.22. The county children services board is authorized to accept and hold gifts, and to acquire property, supplies, and services. R.C. 5153.16(B)(10); R.C. 5153.30; R.C. 5153.34. Operations of the board are funded by taxes levied and appropriations made by the board of county commissioners. R.C. 5153.35; R.C. 5153.37.

With respect to the investigation of child abuse, the duties of a county children services board are set forth in R.C. 2151.421. Various persons who work with children are required to report knowledge or suspicion of child abuse or neglect, or threatened abuse or neglect, and any person with such knowledge or suspicion may make a report. R.C. 2151.421(A)-(B). Reports of child abuse or neglect may be directed to the children services board or to a municipal or county peace officer, including the county sheriff. *Id.*; *see also* R.C. 311.07; 1992 Op. Att'y Gen. No. 92-046, at 2-188. When a report is made to a municipal or county peace officer, the officer must report it to the county children services board. R.C. 2151.421(D); *see also* R.C. 5153.28.

When a county children services board receives a report of known, suspected, or threatened child abuse or neglect, it must investigate the report within twenty-four hours to determine the circumstances, the cause of injuries, abuse, neglect, or threat, and the persons responsible. R.C. 2151.421(F)(1). The investigation "shall be made in cooperation with the law enforcement agency," which may be the county sheriff,[1] and in accordance with the child abuse and neglect plan of cooperation for the county.[2] *Id*; *see also* R.C. 2151.421(J); 13 Ohio Admin. Code 5101:2-34-32.

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[1] While R.C. 2151.421 does not define the term "law enforcement agency," the statute refers to the county peace officer (ordinarily the county sheriff), municipal peace officers, and, in connection with the county plan of cooperation, township peace officers. It is thus apparent that the county sheriff is a law enforcement agency for purposes of R.C. 2151.421. Whether the sheriff is the appropriate law enforcement agency in a particular situation will depend upon the facts of that situation and the terms of the child abuse and neglect plan of cooperation adopted in that county. *See* note 2, *infra*. *See generally* 1992 Op. Att'y Gen. No. 92-046. Your letter indicates that the sheriff in question works on many investigations involving abuse. It appears, accordingly, that this sheriff is the appropriate law enforcement agency in various situations arising under R.C. 2151.421.

[2] The child abuse and neglect county plan of cooperation is prepared and subscribed to by a committee consisting of judges or their representatives, the sheriff and other law enforcement officers, the prosecuting attorney, legal counsel of municipal corporations, and the public children services agency. The plan sets forth normal operating procedures to be employed in executing responsibilities regarding child abuse reporting and investigation and related criminal laws, with a goal of eliminating unnecessary interviews of children. R.C. 2151.421(J). The plan provides for

Cross-referral to a law enforcement agency is required in certain situations, such as when the allegation could constitute a criminal offense, when the board requires assistance in the investigation, or when a third-party investigation is required. 13 Ohio Admin. Code 5101:2-34-32(B)(4). The county children services board must submit a written report of its investigation to the appropriate law enforcement agency. R.C. 2151.421(F)(1). The county children services board must provide protective and emergency supportive services to protect the children and, when possible, to preserve the family unit. R.C. 2151.421(I). The county children services board may make a recommendation to the county prosecutor or city law director concerning action necessary to protect the children. R.C. 2151.421(F)(2).

Let us look now to the provisions defining the responsibilities of the county sheriff. The county sheriff is an elective officer whose basic duties are to preserve the public peace and to bring to justice those known to have committed illegal acts. R.C. 311.01; R.C. 311.07. The sheriff and the sheriff's deputies arrest people who violate the criminal laws, detain them in appropriate facilities, or release them in accordance with law. They execute warrants, writs, and process and attend upon the courts. R.C. 311.07; *see also* R.C. 311.04; R.C. 311.17; R.C. 2935.01(B); 1990 Att'y Gen. No. 90-091. They may be required to transport persons to and from various public institutions, including children's homes. R.C. 325.07. The duties of a sheriff with respect to particular instances of alleged child abuse may vary depending upon the terms of the county's child abuse and neglect plan of cooperation. The sheriff, however, is responsible for helping to prepare a child abuse and neglect county plan of cooperation that establishes procedures and assigns law enforcement duties to appropriate officials. R.C. 2151.421(J).

Statutory provisions governing the sheriff and the county children services board thus establish different duties for the sheriff than for the board and require that the two coordinate their efforts, exchange reports, and provide support. In a child abuse or neglect situation, the main interest of the county children services board is to protect the well-being of the child. In contrast, the sheriff's focus is upon the enforcement of criminal laws. *See* 1989 Op. Att'y Gen. No. 89-084; *see also* 1989 Op. Att'y Gen. No. 89-108. It is evident from the statutes defining the duties of the sheriff and the county children services board that those two entities have different interests and responsibilities, and that an individual who tried to serve both entities at the same time would be faced with conflicts of interest. As I stated in 1996 Op. Att'y Gen. No. 96-017:

> The integrity of the law enforcement profession demands that the actions, conduct, and motives of law enforcement officers be beyond reproach. As such, I believe that prudence dictates that a law enforcement officer may not simultaneously hold an additional position which would subject him to divided loyalties and conflicting duties or to the temptation to act other than in the best interests of the public.

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cross-referral of cases and for prescribed standards and procedures. R.C. 2151.421(J); 13 Ohio Admin. Code 5101:2-34-71.

1996 Op. Att'y Gen. No. 96-017, at 2-67. *See generally, e.g.*, 1996 Op. Att'y Gen. No. 96-050 (two positions are incompatible if they involve different functions and performance by a single individual would compromise the integrity of one or both of those functions); 1995 Op. Att'y Gen. No. 95-020; 1981 Op. Att'y Gen. No. 81-009.

One particular conflict of interest between a sheriff and a member of the county children services board involves investigations of alleged child abuse or neglect by the board or by the persons it employs or supervises. Because a county children services board is involved in providing care to children, there may be situations in which a report of known or suspected child abuse or neglect involves the acts or omissions of the board or of persons employed or supervised by the board. In those situations, existing law requires that a cross-referral be made to the appropriate law enforcement agency as designated in the county plan of cooperation, for investigation by that law enforcement agency as well as by the board. *See* 13 Ohio Admin. Code 5101:2-34-32; *see also* 1989 Op. Att'y Gen. No. 89-108. In a situation in which the sheriff is the appropriate law enforcement agency, if a single individual were both the sheriff and a member of the county children services board, that individual would lack the independence required for an objective third-party investigation. In investigating the activities of the board, the sheriff would be acting as a check upon the board, a relationship that is prohibited by common law conflict of interest provisions. *See generally, e.g.*, 1961 Op. Att'y Gen. No. 2540, p. 598.

A related conflict would arise generally between the person's law enforcement duties as sheriff and the person's interests in the activities of the county children services board. As the chief law enforcement official for the county, the sheriff is responsible for investigating any possible criminal actions of the county children services board, including those relating to administrative or financial matters. A sheriff who served on the board might develop loyalty to the board that could interfere with the objective performance of his duties as sheriff. It has been generally established that "when a public position requires an individual to conduct an objective investigation or review of another entity, a conflict arises when the individual holds a second position which creates a loyalty to that entity or a predisposition toward the outcome of the review or investigation." 1989 Op. Att'y Gen. No. 89-022, at 2-106. Thus, a conflict of interest would result if a sheriff who enforces statutory criminal provisions against a county children services board were to serve as a member of that board. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-093, at 2-448 (a deputy sheriff who is also a deputy clerk of court would be subject to divided loyalties because the sheriff could be called upon to investigate potential improprieties in the clerk's office); 1984 Op. Att'y Gen. No. 84-028; 1961 Op. Att'y Gen. No. 2066, p. 132. *See generally* 1980 Op. Att'y Gen. No. 80-035, at 2-149 (a conflict of interest exists if an individual'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").

Another area of conflict is the preparation of the child abuse and neglect county plan of cooperation. The county plan of cooperation is prepared and subscribed to by officials including the county sheriff and the public children services agency. *See* note 2, *supra*. The people who participate in the preparation of the plan have different responsibilities with respect to child abuse and neglect and different perspectives concerning the implementation of their respective duties.

While cooperation is the goal, the evident intent is that each perspective be represented by persons seeking the thorough and efficient performance of their responsibilities. Therefore, a single individual would be faced with conflicts in attempting to represent more than one entity during preparation of the plan. *See, e.g.*, 1994 Op. Att'y Gen. No. 94-047. This factor, as well, indicates that the sheriff would encounter conflicts in attempting to serve as a member of the county children services board.

The conflicts of interest between a county sheriff and a member of the county children services board involve basic functions of the two positions and are so substantial as to prevent an individual from simultaneously holding both positions. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-053. I conclude, therefore, that it is not permissible for a single individual to serve both as county sheriff and as member of the county children services board.

For the reasons discussed above, it is my opinion, and you are advised, that the position of sheriff and the position of member of the county children services board are incompatible because of a conflict of interest.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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