May 9, 2003

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
4th Floor Administration Building
160 High Street N.W.
Warren, Ohio 44481-1092

SYLLABUS: 2003-015

The positions of village administrator and member of the board of health of a general health district that includes the village are incompatible.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

May 9, 2003

OPINION NO. 2003-015

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
4th Floor Administration Building
160 High Street N.W.
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

You have requested an opinion whether the positions of village administrator and member of the board of health of a general health district are compatible. The village is in the general health district.[1]

The following seven questions are used for determining whether two public positions are compatible:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?

2. Do the empowering statutes of either position limit employment in another public position or the holding of another public office?

3. Is one position subordinate to, or in any way a check upon, the other?

4. Is it physically possible for one person to discharge the duties of both positions?

5. Is there an impermissible conflict of interest between the two positions?

6. Are there local charter provisions, resolutions, or ordinances which are controlling?

7. Is there a federal, state, or local departmental regulation applicable?

---

[1] In each county, the townships and villages "shall be combined into a health district and shall be known as a 'general health district.'" R.C. 3709.01.

*See* 2002 Op. Att'y Gen. No. 2002-022 at 2-139 and 2-140. With respect to the particular question you present, we conclude that the two positions are incompatible because there are instances in which the board of health serves as a check upon the position of village administrator. Thus, it is unnecessary for us to consider the remaining questions.

It is well settled that a person may not serve simultaneously in two public positions when one position is a check upon the other. 2002 Op. Att'y Gen. No. 2002-022 at 2-140; 2002 Op. Att'y Gen. No. 2002-005 at 2-24; 1990 Op. Att'y Gen. No. 90-021 at 2-80. In order to determine whether two positions are incompatible on the basis that one position is a check upon the other, we must first review the powers, duties, and responsibilities conferred upon each position. 2002 Op. Att'y Gen. No. 2002-022 at 2-140; 2002 Op. Att'y Gen. No. 2002-005 at 2-24. If this review discloses such a situation, then the positions are incompatible, and one person may not hold both simultaneously. *See* 2002 Op. Att'y Gen. No. 2002-022 at 2-140; 2002 Op. Att'y Gen. No. 2002-005 at 2-24.

We will consider, first, the powers, duties, and responsibilities of boards of health. A board of health is responsible for preserving the health and safety of persons in its health district. 1981 Op. Att'y Gen. No. 81-079 at 2-311; *see* R.C. 3701.56; R.C. 3709.21-.22; R.C. 3709.26. *See generally* R.C. 3717.11 (a board of health may license retail food establishments and food service operations); R.C. Chapter 3733 (a board of health may regulate manufactured home parks, marinas, and agricultural labor camps); R.C. 3734.04 (a board of health may "provide for the inspection, licensing, and enforcement of sanitary standards for solid waste facilities"). A board of health is also required to abate and remove all nuisances within its jurisdiction, R.C. 3707.01; R.C. 3707.03, inspect the sanitary conditions of public buildings, R.C. 3707.26; R.C. 3709.22; R.C. 3709.26, and distribute antitoxin for the treatment of cases of diphtheria, R.C. 3709.25. In addition, a board of health may offer vaccinations, R.C. 3707.27, provide nursing care services, R.C. 3709.15, provide infant welfare stations and prenatal clinics, R.C. 3709.18, and provide free treatment for venereal diseases, R.C. 3709.22; R.C. 3709.24. In order to discharge its duties, a board of health may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. R.C. 3707.01; R.C. 3709.20; R.C. 3709.21; R.C. 3714.12. *See generally* 2001 Op. Att'y Gen. No. 2001-017.

We will now look to the powers, duties, and responsibilities conferred upon a village administrator.[2] Pursuant to R.C. 735.273, an administrator is required to manage, conduct, and

---

[2] Except as provided in R.C. 735.271-.73, the powers and duties of a village administrator also include those powers and duties conferred upon boards of public affairs and street commissioners. R.C. 735.273. *See generally* R.C. 735.272 ("[u]pon the establishment of the position of village administrator, his appointment by the mayor and confirmation by the legislative authority of the village, as provided by [R.C. 735.271], the board of trustees of public affairs … shall be abolished"); R.C. 735.31 ("[e]xcept in villages that have provided for the

control the water works, electric light plants, artificial or natural gas plants, or other similar public utilities; furnish supplies of water, electricity, or gas; and collect all water, electric, and gas rents. An administrator also supervises the improvement and repair of, *inter alia*, streets, bridges, sewers, drains, and ditches, and cleans all streets, alleys, and public buildings and places. *Id.* In addition, an administrator makes contracts for the sale or purchase of water or electricity, R.C. 743.18; R.C. 743.24, building, enlarging, and repairing of machinery, water-works buildings, and reservoirs, R.C. 743.07, manufacturing and laying down of pipe, *id.*, fire hydrants, *id.*, and other purposes necessary to the full and efficient management and construction of a water works, *id*. *See* R.C. 735.273. An administrator may also "have such other powers and duties as are prescribed by ordinance or by law." *Id*.

Given the respective duties of the two positions, there are several instances in which a board of health serves as a check upon a village administrator. First, a board of health is required to "abate and remove all nuisances within its jurisdiction." R.C. 3707.01; *see* R.C. 3707.03; R.C. 3709.22; 6 Ohio Admin. Code 3701-36-15; *see also* R.C. 3709.21 (authorizing a board of health to "make such orders and regulations as are necessary for … the prevention, abatement, or suppression of nuisances"). *See generally* 1992 Op. Att'y Gen. No. 92-043 (syllabus, paragraph one) (a board of health of a general health district has a continuing duty to inspect plumbing where the plumbing condition constitutes a nuisance under R.C. 3707.01). In addition, a board of health is required to enforce sanitary rules and regulations adopted by the Department of Health. R.C. 3701.56; *see also* R.C. 3709.11 (a health commissioner appointed by a board of health is "charged with the enforcement of all sanitary laws and regulations in the district"). *See generally* 1962 Op. Att'y Gen. No. 3343, p. 832 (syllabus) ("[a] health commissioner of a general health district … is authorized by [R.C. 3701.56] to enforce the sanitary rules and regulations adopted by the public health council under [R.C. 3701.34]"); 1951 Op. Att'y Gen. No. 691, p. 412, at 414-15 ("the public health council has been empowered to adopt sanitary rules and regulations, which were formerly adopted by the state board of health, and … a mandatory duty to enforce the sanitary rules and regulations of the public health council is imposed upon the local authorities"); 1940 Op. Att'y Gen. No. 1921, vol. I, p. 222, at 231 ("[t]he carrying out and enforcement of such orders and regulations as may be made by the State Department of Health through any of its divisions or agencies is expressly charged by law to local officials").

A board of health thus has a duty to ensure the sanitary conditions of, and abate and remove all nuisances from, village buildings and property located in the district. *See generally* R.C. 3701.35 ("[e]very provision of the sanitary code shall apply to and be effective in all portions of the state"); R.C. 3709.22 (authorizing a board of health to provide "for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and county

---

appointment of a village administrator under [R.C. 735.271], a street commissioner shall be appointed by the mayor of a municipal corporation and confirmed by the legislative authority thereof for a term of one year").

homes, and other charitable, benevolent, and correctional institutions[,]" and to "provide for the inspection and abatement of nuisances dangerous to public health or comfort"); *City of Bucyrus v. State Dept. of Health*, 120 Ohio St. 426, 429, 166 N.E. 370 (1929) ("[m]unicipalities, under Article XVIII [setting forth the constitutional provisions governing municipal corporations], have no power to curtail the effect or defeat the enforcement of the sanitary regulations of the state"); 1970 Op. Att'y Gen. No. 70-054 at 2-87 (a "combined health district may be required to abate or suppress a nuisance under [R.C. 3709.22], which had been committed by the city"); 1956 Op. Att'y Gen. No. 7436, p. 819 (syllabus, paragraph three) ("[t]he jurisdiction of a county district board of health extends to property belonging to a municipality located within the territory of such district"). In order to discharge this duty, a board of health has a responsibility to inspect village buildings and property and to issue such orders to village officials as are necessary for the protection of health and the abatement of nuisances. R.C. 3709.21; R.C. 3709.22; *see* R.C. 3709.15 (a board of health "may appoint as many persons for sanitary duty as the public health and sanitary conditions of the district require, and such persons shall have general police powers and be known as 'sanitarians'"); 1986 Op. Att'y Gen. No. 86-038 at 2-195 ("it is clear that the board of health of a general health district has the responsibility of inspecting school premises and the power to issue orders upon school officials as necessary for the protection of health and the abatement of nuisances").

A village administrator is required to manage and control the village's public utility plants and is responsible for cleaning all the village's streets, alleys, and public buildings and places. R.C. 735.273. In performing these duties a village administrator is subject to the board of health's jurisdiction. *See* 1986 Op. Att'y Gen. No. 86-038 at 2-195 (because a city board of education has responsibility for the management and control of the public schools in its district, members of the board may be the recipient of an order from the board of health). A village administrator thus may be the recipient of an order from the board of health requiring the administrator to take some type of action to prevent, abate, or suppress nuisances on, or to ensure or protect the sanitary condition of, village buildings or property under the administrator's care or control. *See* R.C. 3709.21; 1986 Op. Att'y Gen. No. 86-038 at 2-195.

Because a board of health is required to inspect work performed by a village administrator and issue orders requiring an administrator to take any corrective action that the board deems necessary, the board is a check upon the position of village administrator. *See generally* 1986 Op. Att'y Gen. No. 86-038 at 2-196 ("the position of health commissioner of the general health district of a county is incompatible with the position of member of a city board of education … when one of the school buildings and part of the territory of the city school district lie within the territorial jurisdiction of the general health district").

A second instance in which a board of health is a check upon the position of village administrator exists because the board is permitted to regulate sewers within the village. R.C. 3707.01 states, in relevant part, that a board of health has the authority to "regulate the location, construction, and repair of water closets, privies, cesspools, sinks, plumbing, and *drains*[,]" and "the use, emptying, and cleaning … of water closets, privies, cesspools, sinks, plumbing, *drains*, or other places where offensive or dangerous substances or liquids are or may accumulate."

(Emphasis added). The term "drain," as a noun, commonly means "an artificial channel by means of which liquid or other matter is drained or carried off **:** SEWER, SINK, TRENCH … a watercourse esp. when narrow." *Webster's Third New International Dictionary* 685 (1993). R.C. 3707.01 thus empowers a board of health to regulate the construction and repair of sewers within the district, including sewers located within villages.

Under R.C. 735.273, a village administrator supervises the improvement and repair of sewers, drains, and ditches. When improving or repairing a sewer, drain, or ditch, a village administrator must comply with the regulations enacted by the board of health. In order to ensure such compliance, the board of health may inspect the work and issue orders requiring an administrator to take any corrective action that the board deems necessary. *See* R.C. 3709.21; R.C. 3709.22. *See generally* 1992 Op. Att'y Gen. No. 92-043 (syllabus, paragraph one) (a board of health of a general health district may inspect plumbing). Thus, pursuant to R.C. 3707.01, a board of health may regulate sewer work performed by a village administrator. In such a situation, the board is a check upon the position of village administrator.

In light of the foregoing, it is clear that in the situations enumerated above a board of health has a continuing duty to regulate activities performed by village administrators that have a direct bearing upon the public's health and safety. *See generally State ex rel. Bowman v. Bd. of Comm'rs of Allen County*, 124 Ohio St. 174, 177 N.E. 271 (1931) (syllabus, paragraph two) ("[s]ystems for water supply and storm and sanitary sewers, to be established in thickly populated districts outside of municipalities, have a real and substantial relation to the public health and public welfare"), *appeal dismissed*, 286 U.S. 526 (1932); 1987 Op. Att'y Gen. No. 87-097 (syllabus, paragraph four) (under R.C. 3709.22, a board of health "may provide for the inspection and abatement of nuisances and may take such steps as are necessary to protect the public health and prevent disease"). In these situations, a board of health is required to act as a check upon village administrators in order to preserve the health and safety of the public. Therefore, the positions of village administrator and member of the board of health of a general health district that includes the village are incompatible.

Based on the foregoing, it is our opinion, and you are hereby advised that the positions of village administrator and member of the board of health of a general health district that includes the village are incompatible.

Respectfully,

JIM PETRO
Attorney General