March 13, 2006

The Honorable Joseph A. Flautt
Perry County Prosecuting Attorney
111 North High Street
P.O. Box 569
New Lexington, Ohio 43764

SYLLABUS: 2006-005

1. A person who is a child abuse investigator for a county children services board that is designated as the county's public children services agency may also serve as an auxiliary police officer in the unclassified service of a charter city. (1989 Op. Att'y Gen. No. 89-072, distinguished.)

2. As a child abuse investigator for a county children services board, the person may not review or investigate reports he has referred to, or filed with, the county children services board as an auxiliary police officer.

3. As an auxiliary police officer, the person may not conduct or participate in investigations that he has worked, or is working, on as a child abuse investigator.

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OPINION NO. 2006-005

The Honorable Joseph A. Flautt
Perry County Prosecuting Attorney
111 North High Street
P.O. Box 569
New Lexington, Ohio 43764

Dear Prosecutor Flautt:

You have requested an opinion whether the positions of child abuse investigator for a county children services board that is designated as the county's public children services agency[1] and auxiliary police officer in the unclassified service of a charter city[2] are compatible. These two positions are compatible, provided that as a child abuse investigator the person does not

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[1] Each county in Ohio is required to have a public children services agency to assume the powers and duties of the children services function prescribed in R.C. Chapter 5153 for a county. R.C. 5153.02; *see* R.C. 5153.01(A). In order to comply with this mandate, a board of county commissioners may designate a county children services board as the county's public children services agency. R.C. 5153.02; *see also* R.C. 307.981(B) (a board of county commissioners may designate a private or government entity within this state to serve as the county's public children services agency). For the purpose of this opinion, we will refer to a county children services board that serves as a county's public children services agency under R.C. 5153.02 simply as a county children services board.

[2] Article eighteen, section two of the Ohio Constitution empowers the General Assembly to enact general laws to provide for the incorporation and government of cities. If a city prefers a form of government different from those statutorily prescribed by the General Assembly, the city may frame and adopt a charter for its government pursuant to Ohio Const. art. XVIII, § 7, and may, subject to the provisions of Ohio Const. art. XVIII, § 3, exercise under such charter all powers of local self-government. 1954 Op. Att'y Gen. No. 4244, p. 475 (syllabus, paragraph one). "General laws enacted by the General Assembly thus prescribe several forms of government for noncharter cities, while the form of government for cities that adopt a charter is established by the charter." 2004 Op. Att'y Gen. No. 2004-051 at 2-433 n1.

review or investigate reports he has referred to, or filed with, the county children services board as an auxiliary police officer. As an auxiliary police officer, the person may not conduct or participate in investigations that he has worked, or is working, on as a child abuse investigator.

Compatibility Test

Two public positions are compatible when each of the following seven questions yields an answer in favor of a person holding the two positions concurrently:

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?

2003 Op. Att'y Gen. No. 2003-041 at 2-335 and 2-336. *See generally* 2 Ohio Admin. Code 123:1-46-02(F) ("[s]ervice in an appointed or elected position is prohibited when such position is subordinate to or in any way a check upon a position concurrently occupied by a classified or unclassified employee, or when it is physically impossible for one person to discharge the duties of both positions, or if some specific constitutional or statutory bar exists prohibiting a person from serving [in] both positions").

The last two questions concern the applicability of charter provisions, resolutions, or ordinances, and federal, state, and local regulations. No state or federal regulation prohibits a person from serving at the same time as an auxiliary police officer of a city and child abuse investigator for a county children services board. Further, whether there is an applicable local charter provision, resolution, ordinance, or departmental regulation which prohibits the

simultaneous holding of these two positions is a question for county and city officials to answer.[3] It is assumed, for the purpose of this opinion, that no such local charter provision, resolution, ordinance, or departmental regulation exists.[4]

Discussion of R.C. 124.57

The first question asks whether either of the positions is a classified employment within the terms of R.C. 124.57. Pursuant to R.C. 124.57, officers and employees in the classified service of the state, or of a county, city, city school district, or civil service township, are prohibited from taking part in a variety of activities that occur as part of the regular political process and are partisan in nature.[5] In particular, this statute "does the following: it prohibits an officer or employee in the classified service from seeking election or appointment to, or holding,

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[3] We reviewed the city's charter on file with the Secretary of State's office and found no provision in the charter that would prohibit an auxiliary police officer of the city from holding an office or employment with a county children services board.

[4] A collective bargaining agreement between a county or city and its employees entered into pursuant to R.C. Chapter 4117 may govern "the wages, hours, and terms and conditions of public employment covered by the agreement." R.C. 4117.10(A). *See generally* R.C. 4117.03(A)(4) (county and city employees are authorized to bargain collectively with the county and city, respectively, "to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements"). A collective bargaining agreement between a county or city and its employees may thus have provisions that might prohibit a person from holding two public positions simultaneously. Whether the provisions of a collective bargaining agreement prevent a person from holding two public positions at the same time must be addressed and answered by the interested persons on a case-by-case basis. *See generally* 1991 Op. Att'y Gen. No. 91-065 at 2-311 (it is not within the authority of the Attorney General "to render an opinion as to the meaning of language in a specific collective bargaining agreement").

[5] R.C. 124.57 mandates:

> *No officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state* shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political party or for any candidate for public office; … *nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state* be an officer in any political organization or *take part in politics* other than to vote as the officer or employee pleases and to express freely political opinions. (Emphasis added.)

a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service."[6] 2003 Op. Att'y Gen. No. 2003-041 at 2-336; *accord* 2001 Op. Att'y Gen. No. 2001-034 at 2-203; *see* rule 123:1-46-02(C). R.C. 124.57 does not, however, prohibit a classified officer or employee from being elected to a public office in a nonpartisan election or accepting appointment to a public office that is normally filled by nonpartisan election. *See* rule 123:1-46-02(C); 2001 Op. Att'y Gen. No. 2001-034 at 2-203.

We must first determine whether the person as an auxiliary police officer of a charter city or child abuse investigator for a county children services board is an officer or employee that is subject to R.C. 124.57's prohibition. In your specific situation, the city charter places the position of auxiliary police officer in the unclassified service. Charter of the Municipality of New Lexington § 7.03(B)(10). *See generally* R.C. 737.051(A) ("[m]embers of the auxiliary police unit shall not be in the classified service of the city"). An auxiliary police officer in the unclassified service of a charter city thus is not subject to R.C. 124.57's restrictions.[7]

A child abuse investigator for a county children services board is in the classified service. R.C. 5153.12. As an employee in the classified service, a child abuse investigator is prohibited under R.C. 124.57 from running for or holding a partisan political office, or engaging in other partisan political activities. *But see* note six, *supra* (stating that a classified officer or employee may participate in partisan political activities if the terms of a collective bargaining agreement authorize such participation). An auxiliary police officer of a charter city is not a partisan political office. *See* R.C. 737.051. Thus, R.C. 124.57 does not prohibit a child abuse investigator for a county children services board from holding the position of auxiliary police officer. *See* rule 123:1-46-02(C). *See generally* 2004 Op. Att'y Gen. No. 2004-044 at 2-378 ("[t]he position of village police chief thus is not a partisan political office, and a child abuse investigator for a county department of job and family services [that is designated as the county's public children services agency] is not prohibited by R.C. 124.57 from serving in that position").

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[6] A municipal charter provision or ordinance or the terms of a collective bargaining agreement may permit an officer or employee in the classified service to participate in partisan politics. *See* 2004 Op. Att'y Gen. No. 2004-051 at 2-436 and 2-437; 2003 Op. Att'y Gen. No. 2003-041 at 2-336 n.7; 1991 Op. Att'y Gen. No. 91-065 (syllabus, paragraph one).

[7] We note that, if a city charter places the position of auxiliary police officer in the classified service, R.C. 124.57 would not prohibit such an officer from serving as a child abuse investigator for a county children services board insofar as the investigator position is not a partisan political office. *See* 2 Ohio Admin. Code 123:1-46-02(C) (a classified officer or employee is not prohibited from being elected to a public office in a nonpartisan election or accepting appointment to a public office that is normally filled by nonpartisan election). *See generally* R.C. 5153.11 (the executive director of a county children services board is responsible for appointing the board's child abuse investigators).

Therefore, R.C. 124.57's prohibition does not operate to prevent a person from serving simultaneously as an auxiliary police officer in the unclassified service of a charter city and child abuse investigator for a county children services board.

Statutes Prohibiting the Holding of Another Public Position

The second question asks whether the empowering statutes of either position limit a person from being employed in another public position or holding another public office. A provision of the Ohio Constitution may also bar a person from serving in two public positions at the same time.

No Ohio constitutional provision or statute prohibits a person from serving as an auxiliary police officer of a city and child abuse investigator for a county children services board. The second question thus may be answered in the negative.

Subordination and Control

The third question asks whether one position is subordinate to, or in any way a check upon, the other. Members of the auxiliary police unit of a city are appointed by city officials and, as such, are accountable to those officials. *See generally* R.C. 737.051 ("[t]he director of public safety shall be the executive head of the auxiliary police unit, shall make all appointments and removals of auxiliary police officers, subject to any general rules prescribed by the legislative authority by ordinance, and shall prescribe rules for the organization, training, administration, control, and conduct of the auxiliary police unit"). A child abuse investigator for a county children services board is employed by, and under the direct control and supervision of, the board and its executive director. R.C. 5153.11. The positions thus serve different governmental entities and are not subordinate to each other. The positions also operate independently of each other, and neither is required to assign duties to, or supervise, the other.[8] Accordingly, neither position is subordinate to, or in any way a check upon, the other.

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[8] Investigations involving allegations of child abuse require interaction and cooperation between the county children services board and law enforcement agencies. *See* 2004 Op. Att'y Gen. No. 2004-044 at 2-378 n.5; 1989 Op. Att'y Gen. No. 89-108 at 2-529; *see, e.g.,* R.C. 2151.421; R.C. 5153.28; 13 Ohio Admin. Code 5101:2-34-32(B), (J)(2), and (K); 13 Ohio Admin. Code 5101:2-34-32.1(B)(4)(a); 13 Ohio Admin. Code 5101:2-34-35(A) and (B); 13 Ohio Admin. Code 5101:2-34-36; 13 Ohio Admin. Code 5101:2-34-71; 13 Ohio Admin. Code 5101:2-39-12(C)(3) and (H); 13 Ohio Admin. Code 5101:2-39-12.1(E); *see also* 13 Ohio Admin. Code 5101:2-34-38 (authorizing a county children services board to disseminate to law enforcement agencies confidential information pertaining to cases of alleged child abuse or neglect). As such, law enforcement officers are obligated to refer reports of alleged child abuse to, consult in certain instances with, and, when requested, provide assistance to, the county children services board. R.C. 2151.421(B), (D)(1), and (E); R.C. 5153.28; rule 5101:2-34-32(B), (J)(2), and (K);

Physical Ability to Hold and Serve in Both Positions

The fourth question asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that is best resolved by the interested persons at the county and city level because they may more precisely determine the time constraints imposed upon the person as an auxiliary police officer and as a child abuse investigator. 2003 Op. Att'y Gen. No. 2003-041 at 2-339.

However, in order to hold both positions concurrently, the person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner. *Id*. This

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rule 5101:2-34-35(A) and (B); rule 5101:2-39-12(C)(3) and (H); rule 5101:2-39-12.1(E). A county children services board must submit reports of its investigations of alleged child abuse to law enforcement agencies, R.C. 2151.421(F)(1), contact local law enforcement agencies in certain specified situations, rule 5101:2-34-32(J)(2); rule 5101:2-34-32.1(B)(4)(a); rule 5101:34-35(A) and (B); rule 5101:2-34-36(B)(1) and (H); *see* rule 5101:2-34-71(C)(5), and, when requested, conduct for a law enforcement agency a family risk assessment of all children residing in the home of an alleged perpetrator of child abuse, rule 5101:2-34-36(C).

Although the positions of auxiliary police officer of a city and child abuse investigator for a county children services board are mandated by law to cooperate and assist each other during an investigation of alleged child abuse, neither position is responsible for assigning specific duties or responsibilities to, or supervising or controlling the actions of, the other during an investigation. *See* 2004 Op. Att'y Gen. No. 2004-044 at 2-378 n.5. *See generally* R.C. 2151.421(J) (a county's child abuse and neglect memorandum of understanding shall set forth the normal standards and operating procedures to be used in handling and coordinating investigations of reported cases of child abuse); *Brodie v. Summit Cty. Children Services Bd.,* 51 Ohio St. 3d 112, 117, 554 N.E.2d 1301 (1990) (the investigatory responsibility of a county public children services agency under R.C. 2151.421 may not be delegated to another public or private agency); 13 Ohio Admin. Code 5101:2-33-07(A) (a county's public children services agency "shall not enter into contracts with other entities or delegate its responsibility to perform its investigation duties outlined in [R.C. 2151.421]"); rule 5101:2-34-71 (a county's child abuse and neglect memorandum of understanding sets forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities for handling and coordinating investigations of reported cases of child abuse). Accordingly, the positions of auxiliary police officer and child abuse investigator operate independently when performing their respective duties during an investigation into a reported case of child abuse. *See* 2004 Op. Att'y Gen. No. 2004-044 at 2-378 n.5. *See generally* 1989 Op. Att'y Gen. No. 89-108 at 2-531 n.3 (while public children services agencies have exclusive authority to conduct investigations and make recommendations to law enforcement agencies in reported cases of child abuse, this authority in no way "restricts the responsibility of other entities to exercise authority granted to them by other statutes").

means that there may not be a direct conflict between the times when the person is needed to perform duties on behalf of the city and county.[9] *Id*.

Conflicts of Interest

The final question asks whether there is a conflict of interest between the two positions.[10] A person may not hold two public positions simultaneously if he will be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best interest of the respective political subdivisions he serves. *Id*. at 2-339 and 2-340.

We must first review the duties and responsibilities of an auxiliary police officer of a city and a child abuse investigator for a county children services board. If this review discloses any conflicts of interest between the two positions, we must then determine the immediacy of the conflicts to see whether the conflicts may be sufficiently avoided or eliminated entirely so as to allow the person to serve in both positions at the same time. The factors used in making this determination include, but are not limited to, the probability of the conflicts arising, the ability of the person to remove himself from any conflicts that may arise, whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters. *Id.* at 2-340.

We will consider, first, the duties and responsibilities of an auxiliary police officer of a city. The duties and responsibilities of an auxiliary police officer are similar to the duties and responsibilities of a regular city police officer. *See generally* 1967 Op. Att'y Gen. No. 67-015

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[9] As a child abuse investigator, the person is not subject to being called in by the county children services board when he is off duty. Nor is the person required to perform his duties as an auxiliary police officer when he is on duty as an investigator for the county children services board.

Nevertheless, if the person is required to perform his duties as an auxiliary police officer during his regular work hours as a child abuse investigator, the person must take approved vacation or personal leave or leave without pay for the time he is absent from his duties as a child abuse investigator. Similarly, the person should not perform his duties as a child abuse investigator during the hours he is required to perform his duties as an auxiliary police officer unless he does so after having been granted appropriate leave time by city officials.

[10] Under R.C. 102.08, the authority to issue advisory opinions regarding the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43 is vested in the Ohio Ethics Commission, rather than the Attorney General. In accordance with R.C. 102.08, we will refrain from interpreting and applying these provisions by way of a formal opinion, and suggest that you contact the Ohio Ethics Commission should you have any questions concerning the application of these provisions in your particular situation. 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three).

(syllabus, paragraph one) (modified in part, on other grounds, by 1984 Op. Att'y Gen. No. 84-008 (syllabus, paragraph one)) ("[a] municipality may confer upon its auxiliary police such powers as are necessary under the circumstances to discharge the duties imposed upon them"). These duties include preserving the peace, protecting persons and property, and obeying and enforcing all ordinances of the city, all criminal laws of the state and the United States, all court orders issued and consent agreements approved pursuant to R.C. 2919.26 and R.C. 3113.31, all protection orders issued pursuant to R.C. 2903.213 or R.C. 2903.214, and protection orders issued by courts of other states. R.C. 737.11; *see* R.C. 2935.03. In addition, auxiliary police officers of a city may execute warrants and serve summons, subpoenas, writs, and processes in criminal and quasi-criminal cases. *See, e.g.,* R.C. 1901.23; R.C. 2933.02; Ohio R. Crim. P. 4; Ohio R. Crim. P. 41.

We will now look to the duties and responsibilities performed by a child abuse investigator for a county children services board. As the county's public children services agency, the county children services board is designated by statute as the recipient of reports of known or suspected child abuse or neglect or threats of such abuse or neglect and is mandated by statute to investigate such reports. R.C. 2151.421; *see* R.C. 2151.422; R.C. 5153.16(A)(1); R.C. 5153.28. In order to discharge this duty, the board's child abuse investigators may conduct field investigations, interviews with witnesses and alleged child abuse victims, and home visits. *See* R.C. 2151.421; 13 Ohio Admin. Code 5101:2-34-32; 13 Ohio Admin. Code 5101:2-34-32.1; 13 Ohio Admin. Code 5101:2-34-36; *see also* 45 C.F.R. § 1340.14(d) (2005).

The board's child abuse investigators may also take any reasonable action necessary to assess the risk of abuse to a child. This may include, but is not limited to:

> (1) Taking photographs of areas of trauma on the child's body;
> (2) Taking photographs of the child's environment (with the caretaker's consent);
> (3) Securing a medical, and/or psychological examination/evaluation of the child (with the consent of the child, parent, guardian, or custodian; or with a court order); or
> (4) Securing any relevant records (including but not limited to school, mental health, medical, incident reports in an out-of-home care setting).

Rule 5101:2-34-32(I). In addition, child abuse investigators may determine whether a child is at immediate risk of harm and in need of removal from his home or an out-of-home care setting. Rule 5101:2-34-32(J); 13 Ohio Admin. Code 5101:2-39-12; 13 Ohio Admin. Code 5101:2-39-12.1.

A review of the duties and responsibilities of the respective positions discloses one potential conflict of interest between the two positions.[11] Both the city police department and

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[11] Under the rules of compatibility, a person who holds two law enforcement positions with overlapping jurisdiction is subject to impermissible conflicts of interest that render the two positions incompatible. *See, e.g.*, 1996 Op. Att'y Gen. No. 96-017; 1989 Op. Att'y Gen. No. 89-044; 1987 Op. Att'y Gen. No. 87-002; 1985 Op. Att'y Gen. No. 85-021. Because a child abuse investigator for a county children services board is not a law enforcement officer, *see* R.C. 2901.01(A)(11) (defining the term "[l]aw enforcement officer" for purposes of the Revised Code); Ohio R. Crim. P. 2(J) (defining "[l]aw enforcement officer" for purposes of the Ohio Rules of Criminal Procedure), the foregoing rule does not bar a person from serving as an auxiliary police officer of a city and child abuse investigator for a county children services board. *See* 2004 Op. Att'y Gen. No. 2004-044 at 2-381 n.8. *See generally* 1989 Op. Att'y Gen. No. 89-016 at 2-79 (since a part-time investigator for a county coroner is not a law enforcement officer, a city police chief may also serve as a part-time investigator for a county coroner).

Also, 1989 Op. Att'y Gen. No. 89-072 determined that the positions of village police officer and fraud investigator for the county department of human services (now the county department of job and family services, *see* R.C. 329.011; *see also* 1999-2000 Ohio Laws, Part II, 4045 (Am. Sub. H.B. 470, eff. Mar. 14, 2000); 1999-2000 Ohio Laws, Part II, 4177 (H.B. 471, eff. July 1, 2000)) are incompatible because a situation could arise where the person as a village police officer might obtain and use personal information he acquires from his position as fraud investigator. As explained in this opinion at 2-330, a county department of human services "has a duty to safeguard all information and records concerning applicants, recipients, and former recipients of public assistance." *See also* 1983 Op. Att'y Gen. No. 83-071. A fraud investigator's duty to safeguard the personal information of public assistance applicants, recipients, and former recipients thus presents an impermissible conflict of interest that bars him from serving as a village police officer.

R.C. 2151.421(H) and rule 5101:2-34-38 require each report and investigation of alleged child abuse to be kept confidential. *See* R.C. 5153.17. This duty of confidentiality does not, however, prohibit a county children services board from releasing reports and information pertaining to child abuse investigations to law enforcement agencies such as city police departments. Rule 5101:2-34-38; *see* R.C. 2151.421(F)(1); rule 5101:2-34-35(B); rule 5101:2-34-36(B)(1); rule 5101:2-34-71(C)(5); 2004 Op. Att'y Gen. No. 2004-044 at 2-381 n.8; *see also* 1992 Op. Att'y Gen. No. 92-046 at 2-188 ("[t]he term 'law enforcement agency' is not defined for purposes of R.C. 2151.421. It appears, however, that the term refers to municipal police and county sheriffs, who have a duty pursuant to R.C. 2151.421 to accept reports of alleged child abuse and neglect and refer those reports to the [public children services agency]"). *See generally* R.C. 2901.01(A)(11) (for purposes of the Revised Code, city police officers and members of an auxiliary police force organized by a city are "[l]aw enforcement officers"); Ohio R. Crim. P. 2(J) (for purposes of the Ohio Rules of Criminal Procedure, city police officers are

county children services board may investigate within the city reports alleging child abuse. R.C. 2151.421; rule 5101:2-34-32; rule 5101:2-34-32.1; rule 5101:2-34-36; *see also* 13 Ohio Admin. Code 5101:2-34-35(A). During an investigation, the city police department and county children services board are required to cooperate with each other and may seek the assistance of the other. For example, the city police department may report or refer a report alleging child abuse to the county children services board, R.C. 2151.421(B) and (D); R.C. 5153.28, consult with the board prior to removing a child from the person having custody of the child, R.C. 2151.421(E), or request the board for a family risk assessment of all children residing in the home of an alleged perpetrator of child abuse, rule 5101:2-34-36(C). Also, the county children services board may request the assistance of the city police department, refer a report alleging child abuse to the city police department, or notify the county prosecuting attorney that an alleged perpetrator of child abuse has not been investigated by city law enforcement personnel. *See, e.g.,* R.C. 2151.421; rule 5101:2-34-32; rule 5101:2-34-32.1; rule 5101:2-34-35; rule 5101:2-34-36; rule 5101:2-39-12; rule 5101:2-39-12.1.

If a person who holds the positions of auxiliary police officer and child abuse investigator were required as a child abuse investigator to review or investigate reports he has referred to, or filed with, the county children services board as an auxiliary police officer, it would be difficult for the person as a child abuse investigator to set aside his loyalty to the city police department when making decisions pertaining to the extent of interaction between the city police department and county children services board during an investigation. Similarly, if the person, as an auxiliary police officer, were required to conduct or participate in investigations that he has worked, or is working, on as a child abuse investigator, it would be difficult for the person as an auxiliary police officer to set aside his loyalty to the county children services board when making decisions concerning the interaction between the city police department and county children services board during an investigation. In either situation, such a predisposition of loyalty could prevent the person from making completely objective and disinterested decisions or result in preferential treatment being accorded to the other position during an investigation. *See* 2004 Op. Att'y Gen. No. 2004-044 at 2-382. *See generally State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344, 1934 Ohio Misc. LEXIS 1224 (Ct. App. Butler County 1934) (a conflict of interest results when the duties of one position may be administered or discharged in such a way as to result in favoritism and preference being accorded the other position); 1981 Op. Att'y Gen. No. 81-027 at 2-101 ("[i]t is a well-established common law principle that a public officer may not deal with himself, directly or indirectly"); 1980 Op. Att'y Gen. No. 80-035 at 2-149 (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").

"[l]aw enforcement officers"). The situation addressed in 1989 Op. Att'y Gen. No. 89-072 thus may be distinguished from the situation involving a person who serves as an auxiliary police officer of a city and child abuse investigator for a county children services board. *See* 2004 Op. Att'y Gen. No. 2004-044 at 2-381 n.8.

For the reasons that follow, we believe that this conflict of interest may be sufficiently avoided. No statute requires the person as a child abuse investigator or auxiliary police officer to investigate every report alleging child abuse filed with, or referred to, the county children services board and the city police department. Instead, the case load of a child abuse investigator and auxiliary police officer is established by the county children services board and the city police department, respectively. Moreover, because it is likely that the county children services board employs more than one child abuse investigator and the city employs more than one police officer,[12] it is possible for the person to remove himself from any child abuse investigations conducted by the board or city.

Whether the person is able to remove himself from a particular child abuse investigation is a question of fact that must be determined at the local level by county and city officials. *See* 1989 Op. Att'y Gen. No. 89-022 at 2-104 and 2-105 ("whether the job duties of a particular assistant auditor require any involvement with the particular township or municipality where he or she holds the additional position depends upon the organizational structure of the office of the auditor of state" and "whether the position of an assistant auditor below the rank of regional administrator operates as a check upon the public office of township clerk or city planning commissioner is a question of fact to be determined in each instance"). Accordingly, if the person as a child abuse investigator does not review or investigate reports he has referred to, or filed with, the county children services board as an auxiliary police officer, or if the person as an auxiliary police officer does not conduct or participate in investigations that he has worked, or is working, on as a child abuse investigator, the aforementioned conflict of interest does not arise, and the person is not prohibited from serving simultaneously in the positions of auxiliary police officer in the unclassified service of a charter city and child abuse investigator for a county children services board. *See* 2004 Op. Att'y Gen. No. 2004-044 at 2-383. *See generally* 1989 Op. Att'y Gen. No. 89-052 at 2-220 (if a person's duties as a county auditor employee do not involve conducting or participating in an audit of a law library association that employs him as a librarian, "then no conflict [of interest] as such exists, and the two positions would not be incompatible in this regard"); 1989 Op. Att'y Gen. No. 89-016 (syllabus) (the positions of investigator for a county coroner and city police chief are compatible, provided the person as an investigator "is not called upon by the coroner to investigate a death within the jurisdiction of the police chief of the city").

Conclusions

In sum, it is my opinion, and you are hereby advised as follows:

1. A person who is a child abuse investigator for a county children services board that is designated as the county's public children services agency

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[12] In your particular situation the county children services board employs more than one child abuse investigator and the city police department has more than one police officer.

may also serve as an auxiliary police officer in the unclassified service of a charter city. (1989 Op. Att'y Gen. No. 89-072, distinguished.)

2. As a child abuse investigator for a county children services board, the person may not review or investigate reports he has referred to, or filed with, the county children services board as an auxiliary police officer.

3. As an auxiliary police officer, the person may not conduct or participate in investigations that he has worked, or is working, on as a child abuse investigator.

Respectfully,

JIM PETRO
Attorney General