

OPINION NO. 73-032

Syllabus:

A director of a regional planning commission may not be employed or serve as a consultant to a parks commission.

To: George F. Burkhart, Monroe County Pros. Atty., Woodsfield, Ohio
By: William J. Brown, Attorney General, April 18, 1973

I have before me your request for my opinion, which reads as follows:

1. May the Director of a Regional Planning Commission serve as a consultant to a Park Commission comprising the same area as the Regional Planning Commission?

2. May the Director of a Regional Planning Commission be employed by a Park Commission comprising the same region?

In answering these questions, it must first be noted that neither the Constitution nor the statutes prohibit the concurrent holding, by a single person, of the office of county park commissioner and membership on the county planning commission. Therefore, the answer to your inquiry depends upon the question of whether or not the two positions are incompatible. It has been held in State, ex rel. Attorney General v. Gebert, 12 Ohio C.C.R. (n.s.) (1909), that:

Offices are considered incompatible when one is subordinate to, or in any way a check upon the other, or when it is physically impossible for one person to discharge the duties of both.

The duties of the regional planning commission have been enumerated in R.C. 713.23, which reads in pertinent part:

(A) The regional or county planning commission may make studies, maps, plans, recommendations and reports concerning the physical, environmental, social, economic, and governmental character-

istics, functions, services, and other aspects of the region or county respectively. The commission may make such studies, maps, plans, recommendations, and other reports as to areas outside the region or county concerning the physical environmental, social, economic, and governmental characteristics, functions, services, and other aspects which affect the development and welfare of the region or county respectively, as a whole or as more than one political unit within the region or county.

(B) The duties of the planning commission include but are not limited to:

(1) Preparing the plans, including studies, maps, recommendations, and reports on:

(a) Regional goals, objectives, opportunities, and needs, and standards, priorities, and policies to realize such goals and objectives;

(b) Economic and social conditions;

(c) The general pattern and intensity of land use and open space;

(f) General locations and extent of areas for conservation and development of natural resources and the control of the environment;

(g) Long-range programming and financing of capital projects and facilities.

(5) Reviewing, evaluating, and making comments and recommendations on proposed and amended comprehensive land use, open space, transportation, and public facilities plans, projects, and implementing measures of local units of government; making recommendations to achieve compatibility in the region;

(6) Reviewing, evaluating and making comments and recommendations on the planning, programming, location, financing, and scheduling of public facility projects within the region and affecting the development of the area;

A fair reading of this Section would indicate the regional planning commission has both specific and implied authority to make evaluations and recommendations on the planning, programming, and the general locations and extent of areas for conservation and development of natural resources and the control of the environment. This includes, of course, planning for the creation

and maintenance of park lands.

The General Assembly has also provided for the creation of park districts within a county, and for the appointment of a board of park commissioners to operate such parks. The general powers of such board appear in R.C. 1545.07 which provides:

The commissioners appointed in accordance with section 1545.05 of the Revised Code shall constitute the board of park commissioners of the park district. Such board shall be a body politic and corporate, and may sue and be sued as provided in sections 1545.01 to 1545.28, inclusive, of the Revised Code. Such board may employ a secretary and such other employees as are necessary in the performance of the powers conferred in such sections. For the purposes of acquiring, planning, developing, protecting, maintaining, or improving lands and facilities thereon under section 1545.11 of the Revised Code, and for other types of assistance which it finds necessary in carrying out its duties under Chapter 1545. of the Revised Code, the board may hire and contract for professional, technical, consulting, and other special services, and may purchase goods. In procuring any goods, the board shall contract as a contracting authority under sections 307.86 and 307.91, inclusive, of the Revised Code, to the same extent and with the same limitations as a board of county commissioners. In procuring services, the board shall contract in the manner and under procedures established by the bylaws of the board as required in section 1545.09 of the Revised Code.

Under R.C. 1545.09 the board must adopt rules and regulations for the operation of the parks. The Section provides in part:

The board of park commissioners may adopt such bylaws, rules, and regulations as the board deems advisable for the preservation of good order within and adjacent to parks and reservations of land, and for the protection and preservation of the parks, parkways, and other reservations of land under its jurisdiction and control and of property and natural life therein. Such bylaws, rules, and regulations shall be published as provided in case of ordinances of municipal corporations before taking effect.

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And under R.C. 1545.11 the board may acquire land, create and develop the parks. That Section provides in part:

The board of park commissioners may acquire lands either within or without the park district for conversion into forest reserves and for the conservation of the

natural resources of the state, including streams, lakes, submerged lands, and swamp-lands, and to those ends may create parks, parkways, forest reservations, and other reservations and afforest, develop, improve, protect, and promote the use of the same in such manner as the board deems conducive to the general welfare. * * *

It is clear, therefore, that the planning commission and the board of park commissioners perform differing functions with regard to the same area. Whether a member of the regional planning commission can also be an employee of the county park commission has never been decided directly. There have, however, been several Opinions by my predecessors which have a bearing on the issue.

In Opinion No. 796, Opinions of the Attorney General for 1964, my predecessor held that:

The director of a regional planning commission, established pursuant to Section 713.21, Revised Code, may not be hired as a consultant to a township zoning commission or township board of zoning appeals because he may thereby be placed in the position of serving conflicting interests.

In this Opinion, my predecessor reasoned that:

On the one hand, as consultant to the township, he would be in a position propose zoning regulations; on the other hand, as regional planning director, he would be in a position of having to approve or disapprove these same regulations. I believe that, under these circumstances, there is such a conflict of interest as to prohibit the simultaneous holding of the two positions. The conflict need not be a direct one but may be indirect. As stated in the case of State ex rel. Taylor v. Pinney, 13 O.D. 210, (1902).

In Opinion No. 65-069, Opinions of the Attorney General for 1965, serving on a county commission, being a township trustee, or being a member of a municipal planning commission were held to be incompatible with that of being a member of a regional planning commission. It was held that such persons might influence recommendations to the planning commission; and holding two positions might interfere with the exercise of their duties in each office.

In Opinion No. 109, Opinions of the Attorney General for 1963, the office of township trustee was found to be incompatible with the position of advisor to the county planning commission. The Opinion stated that a person would be in an advisory capacity to influence recommendations either similar or opposed to his local board interests.

A mere reading of the two sets of statutes set forth above convinces me that the dangers noted by my predecessors are

present in the situation you propose. The director of a regional planning commission, who is also a consultant or employee of the parks commission in the same area, will quite likely be placed in a position of serving conflicting interests.

In specific answer to your question it is my opinion, and you are so advised, that a director of a regional planning commission may not be employed or serve as a consultant to a parks commission.