

OPINION NO. 81-004**Syllabus:**

The positions of city auditor and volunteer firefighter for the city are incompatible due to a conflict of interest.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, March 4, 1981

I am in receipt of your letter of September 11, 1980, in which you request my opinion with regard to whether an individual may serve as a volunteer firefighter in the same city in which he holds the office of city auditor.

In 1979 Op. Att'y Gen. No. 79-111, I set forth the seven questions which must be considered as part of the analysis of whether two public positions are compatible. These seven questions read as follows:

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 the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically impossible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

In order for two positions to be compatible, all seven questions must be answered in the negative.

The office of city auditor is created by R.C. 733.10. The duties of the city auditor are set forth in R.C. 733.12, which reads as follows:

At the end of each fiscal year, or more often if required by the legislative authority of the municipal corporation, the city auditor or village clerk shall examine and audit the accounts of all officers and departments. The auditor or clerk shall prescribe the form of accounts and reports to be rendered to his department, the form and method of keeping accounts by all other departments, and, subject to the powers and duties of the bureau of inspection and supervision of public offices, shall have the inspection and revision thereof. Upon the death, resignation, removal, or expiration of the term of any officer, the auditor or clerk shall audit the accounts of such officer, and, if he is found indebted to the municipal corporation, the auditor or clerk shall immediately give notice thereof to the legislative authority and to the village solicitor or city director of law, and the latter shall proceed forthwith to collect the indebtedness.

The city auditor may also require evidence from any agent or employee of the

municipal corporation that a particular amount in question is, in fact, due. R.C. 733.13. Moreover, R.C. 733.14 makes the city auditor individually liable for the amount of any voucher issued contrary to the provisions of R.C. Title 7. Thus, the city auditor is responsible, under penalty of personal liability, for ensuring that the funds of the municipal corporation are properly expended. In order to accomplish this task, the city auditor has the power to question municipal agents or employees, R.C. 733.13, and to recover money from city officials. It is essential that the city auditor maintain an objective stance in relation to the city departments which expend municipal funds.

A volunteer firefighter is responsible for dealing with emergency situations throughout the city. Volunteer firefighters may be appointed by city fire departments in accordance with R.C. 737.08. Under R.C. 737.11, the fire department "shall protect the lives and property of the people in case of fire. . .[and] shall perform such other duties as are provided by ordinance." It is my understanding that the volunteer firefighters are not, in fact, volunteers but, rather, receive a sum of money for each fire emergency for which they are called. As the above discussion indicates, this use of funds would be the concern of the city auditor.

If the city auditor were to serve as a firefighter, it would be impossible for him to carry out his duties as auditor with the requisite degree of objectivity. It is to be expected that the auditor would develop a sense of comradeship with his fellow firefighters, with whom he might be risking his life in emergency situations. This individual would, therefore, be subject to divided loyalties when, as auditor, he had to examine the accounts of the fire department. Such a situation would create a conflict of interest between the auditor's duties and his loyalty to the fire department. The existence of such a conflict of interest necessitates a finding of incompatibility. Op. No. 79-111.

I am not unmindful of the fact that it is sometimes difficult to find persons willing to become volunteer firefighters. Certainly, such participation should be encouraged whenever possible. And, in certain instances, the General Assembly has done so. See, e.g., R.C. 505.011 (a township trustee may serve as a volunteer fireman provided that he does not receive compensation for his services). However, the General Assembly has not taken such action in this instance and regret at preventing a willing individual from performing this civic service cannot interfere with the recognition of a situation fraught with difficulties for the individual attempting to serve as both auditor and firefighter.

As I noted earlier, in order to find two positions compatible each of the seven questions which form the compatibility analysis must be answered in the negative. Because I have concluded that a conflict of interest exists, and the positions are, therefore, incompatible, it is not necessary to discuss the other six questions.

Therefore, it is my opinion, and you are advised, that the positions of city auditor and volunteer firefighter for the city are incompatible due to a conflict of interest.