

OPINION NO. 71-057

Syllabus:

A tenant of a metropolitan housing authority may serve as a member of said authority.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William J. Brown, Attorney General, September 22, 1971

I have before me your request for my opinion, which asks the following question:

"Is it legal for a tenant of a Metropolitan Housing Authority to serve as a member of said Authority?"

Section 3735.27, Revised Code, governs the creation of a metropolitan housing authority and reads, in pertinent part, as follows:

"A housing authority shall consist of five members, who shall be residents of the territory embraced in such metropolitan housing authority district. * * *

"Public officials, other than the officers

having the appointive power under this section, shall be eligible to serve as members, officers or employees of the housing authority notwithstanding any statute, charter or law to the contrary. Not more than two such public officials shall be members of the authority at any one time.

"All members of such housing authority shall serve without compensation but shall be entitled to be reimbursed for all necessary expenses incurred. * * *"

After thorough review, I find no statutory authority prohibiting service by a tenant as a member of such authority.

Section 3735.29, Revised Code, seeks to restrain conflict of interest as between public employment and the private interests of the employee and reads as follows:

"No member or employee of a metropolitan housing authority shall have any interest, directly or indirectly, in any contract for property, materials, or service to be acquired by said authority."

Payment by the tenant-member of the rentals of an apartment in accordance with the generally applicable formula under which rentals are determined, would not appear to be violative of that provision. The intention of that Section clearly relates to devices under which the member or employee may make an individual profit by reason of his position.

Another doctrine that often becomes relevant when an individual is appointed to a public position, is the doctrine of incompatibility of public offices. This doctrine, long a part of the common law, holds that "offices are incompatible when one is subject 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." State ex rel. v. Gebert, 12 Ohio C.C.R. (n.s.) 274 (1909). This doctrine, however, pertains only to the holding of two public offices by one person. My predecessor, in Opinion No. 3440, Opinions of the Attorney General for 1938, held that the question of compatibility of offices does not actually arise if one of the offices involved is a private rather than a public office. In the case you have posed, a tenant appointed to a metropolitan housing authority would be holding only one public office and the compatibility doctrine is, therefore, inapplicable.

Thus, I am unable to find any prohibitions, either statutory or in common law, which would prevent a tenant of a metropolitan housing authority from being appointed to a position on such authority. There may be benefits, in fact, to be gained from such appointments. Tenant participation can result in more sensitive and efficient operation. Such an appointment would also recognize

the principle that "participation brings commitment" and that, given an opportunity to participate, tenants will act to improve the quality of life in public housing.

In specific answer to your question, it is my opinion, and you are so advised that a tenant of a metropolitan housing authority may serve as a member of said authority.