

OPINION NO. 796

Syllabus:

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.

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To: Lynn B. Griffith, Jr., Trumbull County Pros. Atty., Warren, Ohio
By: William B. Saxbe, Attorney General, January 16, 1964

Your request for my opinion reads as follows:

"The Trumbull County Regional Planning Commission is supported by contributing funds by the county, cities, villages, and townships.

"A township in Trumbull County wishes to employ the services of the Regional Planning Director as a consultant to them, working in a private capacity.

"Would the acceptance, by the Regional Planning Director, of consideration for services rendered to a contributing township as a consultant to its zoning commission and Board of Zoning Appeals, be incompatible with his position as Regional Planning Director? There would be no conflict in time since all township work would be done in the evenings. The by-laws of the Regional Planning Commission permit any member of the staff to accept work as consultant where such activities do not interfere with their normal duties."

I presume that the regional planning commission referred to in your letter was established pursuant to Section 713.21, Revised Code, as amended September 30, 1963. I also assume that the township zoning commission was established pursuant to Section 519.04, Revised Code, and the township board of zoning appeals pursuant to Section 519.13, Revised Code.

The question to be answered is whether there is a conflict of interest where a regional planning director renders his services, for a consideration, to a contributing township as a consultant to its zoning commission and board of zoning appeals.

Section 519.07, Revised Code, is important to a determination of your question. In material part that section provides:

"* * * the township zoning commission shall submit the proposed zoning resolution, including text and maps to the county or regional planning commission of the county or district in which the township is located * * * for approval, disapproval, or suggestions." (Emphasis added)

While you have not stipulated just what the duties of this person are as consultant, it may be presumed that he at least advises the township zoning commission and board of zoning appeals, and possibly proposes to the former new or amended zoning regulations, in regard to location, size, and use of buildings and lands. He undoubtedly would advise the board of zoning appeals on matters of variances and the propriety of enacted zoning regulations. Thus, because of the requirements of Section 519.07, Revised Code, the consultant, under the facts you have stipulated, would act in a dual capacity. On the one hand, as consultant to the township, he would be in a position to 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):

"It is a doctrine of our law, as old as the principles of equity, that an agent in the execution of his agency shall not be permitted to put himself in a position antagonistic to his principal. An agent, by accepting the undertaking committed to his care, impliedly agrees that he will use his best endeavors to further the interest of his principal. This principle of law precludes him absolutely from dealing with himself either directly or indirectly. Public policy requires, and the law upon that subject, as I say, is as old as the courts of equity, that the agent shall not deal with or for himself directly or indirectly, and all such contracts made by an agent are voidable as against his principal. This salutary principle of the law applies as well to public as to private agents, and public officials, who are the agents of the public, will not be permitted to put themselves in a position antagonistic to the public interests which are represented and which it is their duty to protect.
* * *"

In this case the court questioned the propriety of a county commissioner being interested financially in a company which sold rock to county contractors who were engaged in construction pursuant to contracts with the county commissioners. This case was cited and approved in a recent opinion that this office has rendered. Informal Opinion No. 129, Opinions of the Attorney General for 1963, issued December 9, 1963. That opinion gives a good exposition on the law of conflicts of interests. It was stated therein that:

"It might be noted that in most instances, whether a pecuniary interest is involved or not is immaterial since any interest which the party might have is condemned where the interest involved would preclude the unbiased discharge of the party's public duties."

The foregoing does not preclude members of the regional planning commission from serving also on the township zoning commission since this practice is expressly authorized by Section 519.04, Revised Code. Nor does this opinion condemn the hiring of otherwise qualified consultants by the zoning commission or the board of zoning appeals as authorized by Sections 519.05 and 519.13, Revised Code.

It is therefore my opinion and you are accordingly advised 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.