

May 23, 2017

The Honorable James R. Flaiz
Geauga County Prosecuting Attorney
Court House Annex
231 Main Street
Chardon, Ohio 44024-1235

SYLLABUS:

2017-014

1. A county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district may serve simultaneously as interim director of the joint solid waste management district, provided that the Hatch Act, 5 U.S.C.A. §§ 1501-1508 (West Group 1998), does not prohibit the simultaneous holding of the positions and the Ohio Ethics Commission does not conclude that holding the positions simultaneously constitutes a violation of R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43.
2. Whether a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, and serves simultaneously as interim director of the joint solid waste management district, may receive compensation for serving as interim director of the district requires an interpretation of the ethics and conflict of interest provisions of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43. The Attorney General refrains from advising upon the applicability of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43 as the General Assembly has granted authority to render advisory opinions regarding the application of those statutes to the Ohio Ethics Commission.



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OPINION NO. 2017-014

The Honorable James R. Flaiz
Geauga County Prosecuting Attorney
Court House Annex
231 Main Street
Chardon, Ohio 44024-1235

Dear Prosecutor Flaiz:

You have requested an opinion whether a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, may serve simultaneously as interim director of the same joint solid waste management district. You further ask whether a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, and who serves simultaneously as interim director of the joint solid waste management district may receive compensation for serving as interim director of the district.

You have explained that Geauga County and Trumbull County established a joint solid waste management district pursuant to R.C. 343.01(A)(2). The director of the joint solid waste management district resigned and one of the Geauga County Commissioners was appointed to temporarily serve as director of the district.

The following seven questions are used to determine whether one person may hold simultaneously more than one public position:

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 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?

2016 Op. Att’y Gen. No. 2016-029, at 2-330 (quoting 1999 Op. Att’y Gen. No. 99-045, at 2-279).

A county solid waste management district is established and maintained by the board of county commissioners. R.C. 343.01(A)(1). When a board of county commissioners joins with another board of county commissioners to form a joint solid waste management district, the boards of county commissioners from each of the counties, collectively, constitute the board of directors of the joint district. R.C. 343.01(B) (“[t]he boards of county commissioners of the counties establishing a joint district constitute, collectively, the board of directors of the joint district”). Insofar as the Geauga County Board of Commissioners has joined with the Trumbull County Board of Commissioners to form the Geauga-Trumbull Joint Solid Waste Management District, members of both boards of county commissioners constitute the board of directors of the joint district. In effect, being a member of the board of directors of the joint solid waste management district confers additional powers and duties upon the county commissioners of the counties that are part of the joint district.

Therefore, for the purpose of a compatibility analysis, a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, does not hold an additional office or position; rather, the person holds the office of county commissioner and performs the additional duties of being a member of the board of directors of a joint solid waste management district. Accordingly, in this opinion we have treated the person involved in your letter as holding two positions: county commissioner who, pursuant to R.C. 343.01(B), has the additional duties of member of the board of directors of a joint solid waste management district, and interim director of a joint solid waste management district.

Application of R.C. 124.57

The first question of the compatibility analysis asks whether one of the positions constitutes classified employment for purposes of R.C. 124.57. R.C. 124.57(A) provides, in part:

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.

“R.C. 124.57 ... prohibits a classified employee from holding a partisan elective office or engaging in partisan political activities[.]” 1989 Op. Att’y Gen. No. 89-022, at 2-101.¹

The prohibition of R.C. 124.57(A) applies, *inter alia*, to officers or employees in the classified civil service of the counties. The “classified service” is defined as “the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships.” R.C. 124.01(C). Included in the “civil service” of the counties are “all offices and positions of trust or employment ... in the service of the counties[.]” R.C. 124.01(A). Ordinarily, a joint or regional entity that exercises authority in an area that extends beyond the boundaries of a single county is not considered to be an agency, department, subdivision, or unit of any county. 1994 Op. Att’y Gen. No. 94-021, at 2-93 to 2-94. Rather, such an entity is deemed “an autonomous legal entity distinguishable from the individual counties” that comprise it. 1989 Op. Att’y Gen. No. 89-102, at 2-492 (concluding that “a joint solid waste management district is an autonomous legal entity distinguishable from the individual counties that, pursuant to R.C. 343.01(A)(2) and R.C. 3734.52(A) and (B), participate in its creation”).²

In accordance with that principle, the director of a joint solid waste management district would not be considered to be an employee in the service of the counties. However, R.C. 343.01(B) states “[e]mployees of the [joint solid waste management] district shall be considered county employees for the purposes of [R.C. Chapter 124] and other provisions of state law applicable to employees.” Therefore, the position of interim director of a joint solid waste management district is considered to be a position of employment in the service of the counties for the purposes of R.C. Chapter 124.

The office of county commissioner is in the unclassified service of a county. *See* R.C. 124.11(A)(1). The position of director of a joint solid waste management district is not one of the identified unclassified positions in R.C. 124.11(A). *See generally* 1992 Op. Att’y Gen. No. 92-044 (syllabus, paragraph 1) (“[a] board of a joint solid waste management district, which exercises its authority pursuant to R.C. 343.01(B) to appoint employees of the district, is the ‘appointing

¹ A classified employee may be permitted to participate in partisan political activities if the employee is permitted to do so by an applicable collective bargaining agreement or by a local charter provision. 2014 Op. Att’y Gen. No. 2014-032, at 2-278 n.4; 2009 Op. Att’y Gen. No. 2009-005, at 2-25 n.4. For the purpose of this opinion, we presume that no provision of a charter or collective bargaining agreement applies to the two positions involved in your letter.

² 1989 Op. Att’y Gen. No. 89-102 (syllabus) concluded that “[a] prosecuting attorney is not required by the terms of R.C. 309.09(A) to serve as legal adviser to a joint solid waste management district board of directors.” In 1992, R.C. 343.01 was amended to add division (E), which requires a prosecuting attorney to serve as the legal advisor of a county solid waste management district and requires a county prosecuting attorney to be the legal advisor of a joint solid waste management district, when designated as such by the board of directors of the joint district. 1991-1992 Ohio Laws, Part IV, 6252, 6256-57 (Sub. H.B. 723, eff. Apr. 16, 1993).

authority' of such employees, as defined in R.C. 124.01(D), for purposes of R.C. Chapter 124"). No other provision of the Revised Code identifies the position as unclassified. Accordingly, the position of director of a joint solid waste management district is in the classified service of the counties.

Insofar as a county commissioner is elected by popular vote in a partisan election, R.C. 305.01; 2004 Op. Att'y Gen. No. 2004-051, at 2-436 n.4, R.C. 124.57(A) appears to prohibit a person who is the director of a joint solid waste management district from holding simultaneously the office of county commissioner. However, R.C. 343.01(K)(4) states:

A member of the board of county commissioners of a county solid waste management district, board of directors of a joint solid waste management district, ... or an officer or employee, of any such solid waste management district, neither shall be disqualified from holding any other public office or position of employment nor be required to forfeit any other public office or position of employment by reason of serving as a member of the board of county commissioners, directors, or trustees, or as an officer or employee, of the district, notwithstanding any requirement to the contrary under the common law of this state or the Revised Code.

R.C. 127.57(A) is a provision of the Revised Code that would require a classified employee to forfeit either his position of employment with the district or his office of county commissioner. Accordingly, R.C. 343.01(K)(4) excepts a county commissioner, a member of the board of directors of a joint solid waste management district, and an employee or officer of a joint solid waste management district from the prohibition of R.C. 124.57(A). Therefore, R.C. 124.57(A) does not prohibit an interim director of a joint solid waste management district from serving simultaneously as a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of the same joint solid waste management district.

Constitutional and Statutory Limits on Holding Multiple Positions

The second question asks whether a statutory provision prohibits a person from holding more than one office or position at the same time. The simultaneous holding of multiple positions may also be prohibited by the state constitution. 2004 Op. Att'y Gen. No. 2004-051, at 2-437. No provision of the Ohio Constitution or any statute enacted by the General Assembly prohibits a person from holding simultaneously the office of county commissioner who, pursuant to R.C. 343.01(B), is a member of a board of directors of a joint solid waste management district, and the position of interim director of the same joint solid waste management district.

Subordination and Control and Conflict of Interest

Question three asks whether either position is subordinate to or under the control of the other position or whether either position is a check upon the other. Question five asks whether a conflict of

interest arises because of the duties of the two positions.³ Insofar as questions three and five involve similar issues, we address them together.

“It is a well-settled rule that a person may not serve simultaneously in two public positions when one position is subordinate to, or in any way a check upon, the other.” 2006 Op. Att’y Gen. No. 2006-015, at 2-121. In addition, a person may not hold simultaneously two positions when a conflict of interest exists between the two positions. For the purpose of determining the compatibility of multiple public positions, a conflict of interest exists “when an individual’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.’” 1989 Op. Att’y Gen. No. 89-052, at 2-220 (quoting 1985 Op. Att’y Gen. No. 85-100, at 2-427). Moreover, “a conflict of interest exists when a public servant is subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public.” 1998 Op. Att’y Gen. No. 98-033, at 2-188 to 2-189.

The director of a joint solid waste management district is appointed by the board of directors of the joint solid waste management district. R.C. 343.01(B) (“[t]he board of directors may appoint and fix the compensation of employees of ... the joint district”).⁴ A person may not hold a public

³ As the Ohio Ethics Commission is authorized by R.C. 102.08 to determine the applicability of the ethics and conflict of interest provisions of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43, the Attorney General “refrain[s] from interpreting and applying [those] provisions by way of a formal opinion.” 2011 Op. Att’y Gen. No. 2011-008, at 2-60 n.1. Accordingly, this opinion’s consideration of the existence of a conflict of interest shall not be construed to be a consideration of a conflict of interest under R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43. For a determination of whether R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43 applies to the positions at issue in this opinion, we recommend that you contact the Ohio Ethics Commission. 2011 Op. Att’y Gen. No. 2011-008, at 2-60 n.1.

⁴ A board of directors of a joint solid waste management district may form a regional solid waste management authority for the purpose of carrying out all the duties and responsibilities of the board of directors. R.C. 343.011(A). If a regional solid waste management authority is formed, the board of trustees of the solid waste management authority shall be

comprised of at least the president of the board of county commissioners of each county in the district or his designee, the chief executive officer of the municipal corporation having the largest population within the boundaries of each county in the district or his designee, a member representing the townships within each county in the district chosen by a majority of the boards of township trustees within each county, the health commissioner of the health district having the largest territorial jurisdiction within each county in the district or his designee, and one member representing the public to be appointed by the other members of the board.

position and be the appointing authority for that public position, unless a statute authorizes holding both positions. 2006 Op. Att’y Gen. No. 2006-015, at 2-121 (“unless a statute provides otherwise, a clear case of incompatibility is presented when a person wishes to hold a public position, and, at the same time, serve as a member of the board that is the appointing authority for that position”); *accord* 2014 Op. Att’y Gen. No. 2014-045, at 2-392 (“[i]t is well established that ‘all officers having appointive power are disqualified for the positions to which they may appoint’” (quoting 1979 Op. Att’y Gen. No. 79-086, at 2-277)); 2007 Op. Att’y Gen. No. 2007-020, at 2-209 (questioned, in part, on other grounds by 2014 Op. Att’y Gen. No. 2014-016) (“[i]t is well established that a public officer is disqualified from serving on a board or commission to which he makes appointments, unless a statute authorizes the officer to hold the other position”); 1996 Op. Att’y Gen. No. 96-022, at 2-78 (“[i]t is a long established principle that a board with authority to make appointments to a particular position may not appoint one of its own members to that position”). As explained in a previous Attorney General opinion:

Adherence to the foregoing tenet “serves to avoid conflict of interest situations that arise when an officer is responsible for supervising his own actions in another public position and is consistent with the common law compatibility principle that prohibits a person from holding two public positions simultaneously when one is subordinate to, or a check upon, the other.”

2009 Op. Att’y Gen. No. 2009-049, at 2-366 (quoting 2007 Op. Att’y Gen. No. 2007-020, at 2-209 (questioned, in part, on other grounds by 2014 Op. Att’y Gen. No. 2014-016)).

With respect to the two positions you ask about, R.C. 343.01(K) expressly authorizes a county commissioner, who is a member of the board of directors of a joint solid waste management district, to serve simultaneously as an officer or employee of the joint solid waste management district. R.C. 343.01(K)(1) provides:

A ... member of the board of directors of a joint solid waste management district ... or officer or employee of any solid waste management district, for the purposes of [R.C. 102.03, R.C. 102.04, R.C. 2921.41, and R.C. 2921.42], shall not be considered to be directly or indirectly interested in, or improperly influenced by, any of the following:

R.C. 343.011(A). The board of trustees of a regional solid waste management authority has authority to appoint “employees necessary to manage the affairs of the district,” which includes the appointment of an executive director. R.C. 343.011(B)(1). It is our understanding that the Geauga-Trumbull Joint Solid Waste Management District is managed by a board of directors and a regional solid waste management authority has not been formed. *See* Geauga-Trumbull Solid Waste Management District, <http://www.startrecycling.com/about-us/about-us> (last visited May 17, 2017).

(a) A contract entered into under [R.C. Chapter 343] or [R.C. 307.15 or R.C. 3734.52-.575] between the district and any county forming the district, municipal corporation or township located within the district, or health district having territorial jurisdiction within the district, of which that member, officer, or employee also is an officer or employee, but only to the extent that any interest or influence could arise from holding public office or employment with the political subdivision or health district;

....

(c) An expenditure of money made by the district for the benefit of any county forming the district, municipal corporation or township located within the district, or health district or county or regional planning commission having territorial jurisdiction within the district, of which that member also is a member, officer, or employee, but only to the extent that any interest or influence could arise from holding public office or employment with the political subdivision, health district, or commission;

(d) An expenditure of money made for the benefit of the district by any county forming the district, municipal corporation or township located within the district, or health district or county or regional planning commission having territorial jurisdiction within the district, of which that member also is a member, officer, or employee, but only to the extent that any interest or influence could arise from holding public office or employment with the political subdivision, health district, or commission.

R.C. 343.01(K)(2) provides:

A solid waste management district, county, municipal corporation, township, health district, or planning commission described or referred to in divisions (K)(1)(a) to (d) of this section shall not be construed to be the business associate of a person who is *concurrently a member of the board of county commissioners, directors, or trustees, or an officer or employee, of the district and an officer or employee of that municipal corporation, county, township, health district, or planning commission* for the purposes of [R.C. 102.03, R.C. 2921.42, and R.C. 2921.43]. *Any person who is concurrently a member of the board of county commissioners, directors, or trustees, or an officer or employee, of a solid waste management district so described or referred to and an officer or employee of a county, municipal corporation, township, health district, or planning commission so described or referred to may participate fully in deliberations concerning and vote on or otherwise participate in the approval or disapproval of any contract or expenditure of funds described in those divisions as a member of the board of county commissioners or directors, or an officer or employee, of a county or joint solid waste management district; member of the board of trustees, or an officer or employee, of a regional solid waste management authority managing a county or joint solid waste management district; member of the legislative authority, or an officer or employee, of a county forming the district; member of the legislative authority, or an officer or employee, of a municipal corporation or township located within the district; member of the board of health, or an officer or employee, of a health district having territorial jurisdiction within the district; or member of the*

planning commission, or an officer or employee of a county or regional planning commission having territorial jurisdiction within the district. (Emphasis added.)

R.C. 343.01(K)(4) provides:

A member of the ... board of directors of a joint solid waste management district ... or an officer or employee, of any such solid waste management district, neither shall be disqualified from holding any other public office or position of employment nor be required to forfeit any other public office or position of employment by reason of serving as a member of the board of county commissioners, directors, or trustees, or as an officer or employee, of the district, notwithstanding any requirement to the contrary under the common law of this state or the Revised Code.

The provisions of R.C. 343.01(K) expressly permit a county commissioner, who is also a member of a board of directors of a solid waste management district, to hold simultaneously a position of employment with the same joint solid waste management district. Opinions of the Attorney General that have considered provisions similar to R.C. 343.01(K)(1), (2), and (4) have concluded that in enacting those provisions, the General Assembly has authorized a person to hold multiple positions at the same time despite potential conflicts of interest arising from the official duties of the positions. *See e.g.*, 1984 Op. Att’y Gen. No. 84-018, at 2-62 (“the General Assembly by enacting R.C. 505.011 has implicitly sanctioned this use of appointive powers. The General Assembly has evidently deemed that the potential conflicts of interest which might arise between a township trustee and volunteer firefighter are outweighed by the need for firefighters” (citations omitted)); 1977 Op. Att’y Gen. No. 77-034, at 2-123 (“it was the manifest intent of the General Assembly that despite any conclusion of incompatibility arising from the common law analysis, a member of a regional planning commission may also hold any other public office or any of the other positions enumerated in the above revision”). Clearly, the provisions of R.C. 343.01(K) are intended to alleviate statutory and common law limitations on a person’s ability to serve simultaneously in multiple positions related to a joint solid waste management district and the governments of the counties comprising the joint district that result from the various duties performed by the person in the official capacity of each of the positions.⁵

⁵ Although the General Assembly has contemplated that a county commissioner and member of the board of directors of a joint solid waste management district may also be an officer or employee of the same joint district despite the existence of certain conflicts of interest, the provisions of R.C. 343.01(K) are not intended to exempt that person from all potential conflicts of interest. R.C. 343.01(K)(3) provides that “[n]othing in divisions (K)(1) or (2) of [R.C. 343.01] shall be construed to exempt any member of the board of county commissioners, directors, or trustees, or an officer or employee, of a solid waste management district from a conflict of interest arising because of a personal or private business interest.” Conflicts of interest that arise because of the person’s personal or private business interests are the types of conflicts of interest about which the Ohio Ethics Commission is authorized to provide advisory opinions. *See* R.C. 102.08(A).

In light of the General Assembly's enactment of R.C. 343.01(K), a person is not prohibited from holding simultaneously the position of interim director of a joint solid waste management district and the office of county commissioner, who is a member of the board of directors of the joint solid waste management district, even though the position of interim director is subordinate to the office of county commissioner, who is a member of the board of directors of the joint solid waste management district. In addition, the enactment of R.C. 343.01(K) renders it unnecessary to further address the question of whether a conflict of interest exists as a result of the official duties of the positions. *See* 2012 Op. Att'y Gen. No. 2012-040, at 2-351 (“[b]ecause the General Assembly has authorized a person to serve simultaneously as a township trustee and member of the governing board of a county land reutilization corporation even though conflicts of interest may exist between the two positions, we do not find it necessary to consider whether any conflicts do in fact exist between [the two positions]”). We conclude that questions three and five of the compatibility analysis do not prohibit a county commissioner, who is a member of the board of directors of a joint solid waste management district, from holding simultaneously the position of interim director of the same joint solid waste management district.

Physical Ability to Discharge Duties

Question four asks whether it is physically possible for one person to hold simultaneously two positions and fully perform all the duties required of each position. Whether a person is physically able to fulfill the duties of two positions is “a factual question that is best resolved by the interested local officials since they may more precisely determine the time constraints and demands imposed upon the person” in each position. 2004 Op. Att'y Gen. No. 2004-051, at 2-438.

In resolving this inquiry, it is important to consider that “a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner[, which] means that there may not be a direct conflict between the times when the person is needed to perform duties” in each position. *Id.* at 2-439 (citation omitted). If, as a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, the person is required to be available during the hours in which he is working as interim director of the joint solid waste management district, the person must use approved leave commensurate with the amount of time in which he is absent from his duties as interim director. *See* 2011 Op. Att'y Gen. No. 2011-008, at 2-60.

Charter Provisions, Local Ordinances, and Federal, State, or Local Departmental Regulations

The sixth and seventh questions ask about any applicable charter provisions, local ordinances, and federal, state or local departmental regulations that may prohibit a person from simultaneously holding the two positions. “[W]hether there is an applicable local charter provision, resolution, ordinance, or departmental regulation which prohibits a person from concurrently holding ... two positions is a question for [local] officials to answer.” 2004 Op. Att'y Gen. No. 2004-051, at 2-434. It is presumed for the purpose of this opinion that no local charter provisions, resolutions, ordinances, or departmental regulations apply. *See id.* There are no state regulations that prohibit a person from

simultaneously holding the office of county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, and the public position of interim director of the same joint solid waste management district.

As for a federal law that may prohibit the holding of the two positions involved in this opinion, the Hatch Act, 5 U.S.C.A. §§ 1501-1508 (West Group 1998), may be applicable. The Hatch Act prohibits a state or local officer or employee from being a candidate for an elective office when the employee's salary "is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency[.]" 5 U.S.C.A. § 1502(a)(3). For purposes of the Hatch Act, "State or local officer or employee" is defined as "an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency[.]" 5 U.S.C.A. § 1501(4).⁶

An interim director of a joint solid waste management district employed by the board of directors of the solid waste management district may be covered by the Hatch Act if his salary is paid by a federal grant or loan. Because the prohibition of 5 U.S.C.A. § 1502(a)(3) applies to offices that are filled by a partisan election, *see* 5 U.S.C.A. § 1503, if the salary of the person serving as interim director of the joint solid waste management district is paid by a federal grant or loan, he will be prohibited from being a candidate in a partisan election for county commissioner.

⁶ 5 U.S.C.A. § 1501(4) (West Group 1998) excludes the following state or local officers and employees from the definition:

- (A) an individual who exercises no functions in connection with [an activity that is financed in whole or in part by loans or grants made by the United States or a Federal agency]; or
- (B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by –
 - (i) a State or political subdivision thereof;
 - (ii) the District of Columbia; or
 - (iii) a recognized religious, philanthropic, or cultural organization.

Additionally, the following are excluded from the prohibition of 5 U.S.C.A. § 1502(a)(3):

- (1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;
- (2) the mayor of a city;
- (3) a duly elected head of an executive department of a State, municipality, or the District of Columbia who is not classified under a State, municipal, or the District of Columbia merit or civil-service system; or
- (4) an individual holding elective office.

5 U.S.C.A. § 1502(c).

Receipt of Compensation

You have asked whether a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, and serves simultaneously as interim director of the joint solid waste management district, may receive compensation for serving as interim director of the district. Restrictions on a person's ability to receive compensation when holding a public position originate in the prohibitions of R.C. 102.03(D) (using authority or influence to secure anything of value), R.C. 102.03(E) (improperly soliciting or accepting anything of value), R.C. 102.04(C) (receiving compensation other than from the agency the officer or employee serves); R.C. 2921.42 (having an unlawful interest in a public contract), and R.C. 2921.43 (soliciting or receiving improper compensation). Thus, whether a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, and serves simultaneously as interim director of the joint solid waste management district, may receive compensation for serving as interim director of the district hinges upon whether R.C. 102.03(D) and (E), R.C. 102.04(C), R.C. 2921.42, and R.C. 2921.43 apply. If those provisions do apply to a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district, and serves simultaneously as interim director of the joint solid waste management district, such a person may receive compensation as interim director only if R.C. 343.01(K) operates as an exception to the prohibitions in R.C. 102.03, R.C. 102.04, R.C. 2921.42, and R.C. 2921.43.

Pursuant to R.C. 102.08(A), the General Assembly has granted authority to the Ohio Ethics Commission to render advisory opinions about the application of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43. When the Ohio Ethics Commission has rendered an opinion based upon a specific set of facts, the opinion may serve to insulate the person from criminal and civil liability or actions for removal. R.C. 102.08(B); 1998 Op. Att'y Gen. No. 98-017, at 2-90. Consequently, the Attorney General refrains from rendering advice concerning those provisions. 1998 Op. Att'y Gen. No. 98-017, at 2-90. Questions regarding the application of those statutes to the positions involved in your letter should instead be directed to the Ohio Ethics Commission.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district may serve simultaneously as interim director of the joint solid waste management district, provided that the Hatch Act, 5 U.S.C.A. §§ 1501-1508 (West Group 1998), does not prohibit the simultaneous holding of the positions and the Ohio Ethics Commission does not conclude that holding the positions simultaneously constitutes a violation of R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43.
2. Whether a county commissioner who, pursuant to R.C. 343.01(B), is a member of the board of directors of a joint solid waste management district,

and serves simultaneously as interim director of the joint solid waste management district, may receive compensation for serving as interim director of the district requires an interpretation of the ethics and conflict of interest provisions of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43. The Attorney General refrains from advising upon the applicability of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43 as the General Assembly has granted authority to render advisory opinions regarding the application of those statutes to the Ohio Ethics Commission.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General