

OPINION NO. 88-041

Syllabus:

A county commissioner may, pursuant to R.C. 122.69(B)(3) and 42 U.S.C. §9904(c)(3), serve on the board of directors of a community action agency.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 21, 1988

I have before me your request for my opinion on the issue of whether the position of county commissioner is compatible with the position of member of the board of directors of a community action agency. The seven-step compatibility analysis set forth in 1979 Op. Att'y Gen. No. 79-111 is used to determine whether two public positions are compatible. However, where one of the positions is private the compatibility analysis is inapplicable and the question instead becomes whether an impermissible conflict of interest prohibits the individual from holding both positions. 1987 Op. Att'y Gen. No. 87-025.

R.C. 122.66(D) defines a community action agency as "a community-based and operated private nonprofit agency or organization" whose purpose is to provide services and activities which have an impact on the causes of poverty in the community. Since the Revised Code defines a community action agency as a private organization, I assume that the board position is private and that the compatibility analysis is inappropriate.¹ I therefore will limit my consideration of your question to the issue of whether an impermissible conflict of interest prohibits a county commissioner from serving on the board of directors of a community action agency.

Several of the provisions of R.C. 122.69 raise the possibility of a conflict of interest. Subdivision (A) of that section provides:

Any nonprofit agency or organization seeking designation as a community action agency by the office of community services shall obtain the endorsement of the *chief elected officials* of at least two-thirds of the municipal corporations and the counties within the community to be served by the agency or organization. (Emphasis added.)

Since a county commissioner is a chief elected official of a county, R.C. 305.01, a county commissioner sitting on the board of directors of the community action agency would have to seek his own endorsement. This would present a conflict of interest. R.C. 122.69(B)(2) requires that each community action agency submit an annual program plan and budget to the office of community services in the department of development. R.C. 122.69(B)(2) further provides:

At least ten days prior to its submission to the office of community services, a copy of the program plan and budget shall be made available to the chief elected officials of the municipal corporations and counties within the service area in order to provide them the opportunity to review and comment upon such plan and budget.

¹ A community action agency is not a private organization for all purposes. See 42 U.S.C. §9904(e) (providing that community action agencies "shall be deemed to be a State or local agency" for purposes of 5 U.S.C. Chapter 15 [dealing with the political activity of certain state and local employees]). Cf. R.C. 122.69(B)(3) (setting limits on the number of directors on the board of the agency and requiring that one-third of the board consist of public officials); R.C. 122.68 (providing that the state disburse certain federal funds to community action agencies). However, for purposes of this opinion, I will assume that member of a board of directors of a community action agency is a private position.

Here, too, county commissioners serving on the board of directors of a community action agency would be subjected to divided loyalties.

Although a conflict may exist because of these provisions, I find that concerns over conflicting interests are overridden by the fact that one-third of the board of directors of a community action agency is statutorily required to be comprised of elected public officials. *See* R.C. 122.69(B)(3) (requiring that a community action agency compose its board of directors in compliance with 42 U.S.C. §9904); 42 U.S.C. §9904(c)(3) (1982) (requiring that one-third of the board of directors of a community action agency be "elected public officials, currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board...appointive public officials may be counted in meeting such one-third requirement"). The clear purpose of these statutes is that elected public officials become involved in community action agencies and serve on the boards of such agencies. Because the General Assembly chose to incorporate 42 U.S.C. §9904(C)(3) into R.C. 122.69(B)(3), it apparently determined that the conflict of interest attendant with having elected officials serve on a board of directors of a community action agency is overridden by the benefits derived from the direct involvement of those officials. *Cf.* Ohio Ethics Commission, Advisory Op. No. 82-004, p.1 (1982) (although R.C. 2921.42² ordinarily prohibits a city council member from serving on the board of a non-profit corporation that contracts to sell goods or services to the city, the result is different "when the composition of the board is mandated by the governmental entity providing the funds"); Ohio Ethics Commission, Advisory Op. No. 83-010, p.2 (1983) ("The official designation by a sovereign governmental entity, requiring that a council member serve on the board of the non-profit community development corporation in his official capacity, is sufficient to demonstrate that the public official does not have a prohibited personal interest in the public contract").

Therefore, it is my opinion and you are advised that a county commissioner may, pursuant to R.C. 122.69(B)(3) and 42 U.S.C. §9904(c)(3), serve on the board of directors of a community action agency.

² R.C. 2921.42(A)(4) prohibits public officials from knowingly having "an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected."