

OPINION NO. 85-076**Syllabus:**

The positions of amusement ride inspector and United States mail carrier are compatible, provided it is physically possible for one person to perform the duties of both positions.

To: Dale L. Locker, Director, Ohio Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 6, 1985

I have before me your request for my opinion regarding the compatibility of the positions of amusement ride inspector for the Ohio Department of Agriculture and subcontractor on a United States mail route. It is my understanding that the individual in question was hired, on a temporary basis, to deliver mail in the rural areas of two townships.

Compatibility questions arise when one individual holds or wishes to hold two public positions. 1979 Op. Att'y Gen. No. 79-III sets forth the seven issues which must be analyzed in determining whether two public positions are compatible, 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 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?

It is my understanding that there are no departmental regulations which limit the holding of outside employment by a ride inspector. Pertinent federal regulations governing the employment and conduct of mail carriers will be discussed below.

Question number one concerns the application of R.C. 124.57, which prohibits "employee[s] in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships" from taking part in political activity other than to vote and express their political opinions. R.C. 124.57 prohibits an employee in the classified service from being a candidate for public office in a partisan election. See 1982 Op. Att'y Gen. No. 82-085.

The position of amusement ride inspector is in the classified service of the state. 1985 Op. Att'y Gen. No. 85-045. See R.C. 124.11(B). Thus, a ride inspector is subject to the prohibition of R.C. 124.57. A mail carrier, however, is appointed by the United States Postal Service, 39 U.S.C. §1001, and is not elected in a partisan election. Thus, a classified employee is not prohibited from serving as a mail carrier. I note that Postal Service employees are prohibited by federal law from participating in partisan political activity. See 39 C.F.R. §§447.51, 447.52, 447.62. An amusement ride inspector is not elected in a partisan election, but is employed by the Director of Agriculture pursuant to R.C. 1711.53(D). Thus, the above-cited provisions of federal law do not prohibit a Postal Service employee from serving as an amusement ride inspector.

I turn now to the question whether the empowering statutes of either position limit outside employment. As was summarized in Op. No. 85-045 at ____:

R.C. 1711.53(D), which establishes the position of amusement ride inspector within the Department of Agriculture, provides that no person may inspect an amusement ride if, within six months prior to the date of inspection, he was an employee of the owner of the ride. R.C. 1711.53 contains no other restrictions on the outside employment of persons who are employed by the Director of Agriculture as ride inspectors. (Footnote omitted.)

39 U.S.C. §§1001-1011 regulate employment within the Postal Service, and contain no restrictions on the outside employment of mail carriers. 39 C.F.R. §447.23, however, reads as follows:

General principles. An employee may engage in outside employment and other outside activity with or without compensation, except as limited by statute, Executive order, or regulations, including this Code. An employee may not engage in outside employment or other outside activity that is not compatible with the full and proper discharge of the duties and responsibilities of his Postal Service employment. Detailed rules cannot practically be prescribed that will cover every situation of incompatible employment or activity.

39 C.F.R. §447.23 goes on to prescribe general rules governing the outside employment of Postal Service employees. See also 39 C.F.R. §§447.21, 447.22, 447.24, 447.25, 447.26, 447.27 (setting forth standards of conduct for Postal Service employees). See generally 39 C.F.R. Part 447 (Code of Ethical Conduct for Postal Service employees). These rules do not appear to prohibit a Postal Service employee from serving as an amusement ride inspector, although a Postal Service employee would, of course, be expected to comply with all pertinent regulations in serving as an amusement ride inspector.

Question number three is whether one position is subordinate to, or a check upon, the other and question number five is whether there is a conflict of interest

between the two positions. See State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274, 275 (Cir. Ct. Franklin County 1909). In order to analyze these issues, it is necessary for me to examine the duties and powers of both positions.

As I summarized in Op. No. 85-045 at _____:

R.C. 1711.50-.57 provide for the regulation of amusement park rides. An owner of an amusement ride must, prior to the operation of the ride and annually thereafter, apply for and receive a permit from the Department of Agriculture. R.C. 1711.53(A). Prior to issuing a permit the Department must inspect the amusement ride. Id. See R.C. 1711.53(B) ("[t]he department shall, pursuant to Chapter 119. of the Revised Code, adopt such rules for the safe operation and inspection of all amusement rides as are necessary for amusement ride safety and for the protection of the general public"); R.C. 1711.53(F), (G), and R.C. 1711.55(E) (providing for additional inspections). R.C. 1711.53(D) provides for the employment of amusement ride inspectors and reads as follows:

The director shall employ a chief inspector and such additional inspectors and employees as may be necessary to administer and enforce sections 1711.50 to 1711.57 of the Revised Code. The director may appoint or contract with other persons to perform inspections of amusement rides provided that such persons meet the qualifications for inspectors established by the rules adopted under division (B) of this section and are not owners, or employees of owners, of any amusement ride subject to inspection under section 1711.50 to 1711.57 of the Revised Code. No person shall inspect an amusement ride who, within six months prior to the date of inspection, was an employee of the owner of the ride.

See [2] Ohio Admin. Code 901-11-03.

With regard to mail carriers, 39 U.S.C. §1001(a) provides that, "the Postal Service shall appoint all officers and employees of the Postal Service." 39 U.S.C. §1001(e) reads:

The Postal Service shall have the right, consistent with section 1003 and chapter 12 of this title and applicable laws, regulations, and collective-bargaining agreements—

(1) to direct officers and employees of the Postal Service in the performance of official duties;

(2) to hire, promote, transfer, assign, and retain officers and employees in positions within the Postal Service, and to suspend, demote, discharge, or take other disciplinary action against such officers and employees;

(3) to relieve officers and employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the operations entrusted to it;

(5) to determine the methods, means, and personnel by which such operations are to be conducted;

(6) to prescribe a uniform dress to be worn by letter carriers and other designated employees; and

(7) to take whatever actions may be necessary to carry out its mission in emergency situations.

See 39 U.S.C. §1003 ("the Postal Service shall classify and fix the compensation and benefits of all officers and employees in the Postal Service"); 39 U.S.C. §1008(a) ("[a] person temporarily employed to deliver mail is deemed an employee of the Postal Service").

From an examination of the functions of an amusement ride inspector and a Postal Service employee, it is clear that neither position is a check upon, or subordinate to, the other and that the duties of the two positions do not conflict. An amusement ride inspector is appointed by, and responsible to, the Director of Agriculture, a state officer. An inspector's duties involve the inspection of amusement rides. A United States mail carrier is appointed by, and responsible to, the United States Postal Service. A mail carrier's duties involve sorting and delivering the mail. Neither position supervises or in any way regulates the other, and the duties of each position are performed independently of the other. I can conceive of no situation in which the interests of the two positions would conflict.

Question number four is whether it is physically possible for one person to discharge the duties of both positions. In answering this question it is necessary to take into account the time demands of each position. Op. No. 79-111. In your letter of request, you state that the individual in question would be expected to serve in a full time capacity as an amusement ride inspector, but that, in this instance, the position of mail carrier is a temporary position, the duties of which are performed on weekends. Thus, it appears that if the individual is able to perform his duties as amusement ride inspector at times other than when he is expected to perform the duties of mail carrier, it would be physically possible for him to perform the duties of both positions. See generally 1964 Op. Att'y Gen. No. 64-1421; 1959 Op. Att'y Gen. No. 1031, p. 708. I leave the final determination of physical impossibility, however, to those individuals who are involved in this matter on the local level, since such persons have a more accurate idea of the time demands which would be placed on an individual who held both positions. See Op. No. 79-111.

In conclusion, it is my opinion, and you are advised, that the positions of amusement ride inspector and United States mail carrier are compatible, provided it is physically possible for one person to perform the duties of both positions.