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COMPATIBLE — PERSON MAY BE EMPLOYED BY GENERAL HEALTH DISTRICT AND CITY HEALTH DISTRICT AT SAME TIME — INVESTIGATIONS — SANITARY MILK REGULATIONS OF EACH DISTRICT.

SYLLABUS:

A person may be employed by a general health district and a city health district at the same time to make investigations of the sanitary milk regulations of each district providing, of course, it is physically possible for the person to perform the duties of both positions.

Columbus, Ohio, December 23, 1941.

Hon. Lester W. Donaldson, Prosecuting Attorney,
Painesville, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Recently the District Board of Health in and for Lake County, Ohio, and also the Painesville City Board of Health, Painesville City being located in Lake County, each separately adopted sanitary milk regulations, and the city regulations and the county regulations are now in effect.

The question is as follows:

It is now necessary for the respective boards of health to employ a person to supervise and make investigations under these regulations, both in the county and in the city. The District Board of Health of Lake County has employed a man to do this work and the question now raised is as to whether or not the Painesville City Board of Health can participate in the employment of the same man to do the work for the city Board of Health in Painesville City and to pay for his employment and share in the cost of paying an agreed amount to the Lake County Board of Health District and the full salary to be disbursed by the Lake County Board of Health District.”

Section 1261-22, General Code, in so far as it is pertinent to your inquiry, provides:

“In any general health district the district board of health may upon the recommendation of the health commissioner appoint for whole or part time service a public health nurse and a clerk and such additional public health nurses, physicians and other persons, as may be necessary for the proper conduct of its work. * * * ”

In the case of city health districts, similar authority is conferred by Section 4408, General Code, which reads as follows:

“In any city health district, the board of health or person or persons performing the duties of a board of health shall appoint for whole or part time service a health commissioner and may appoint such public health nurses, clerks, physicians, and other persons as they deem necessary.”

From the foregoing, it is evident that boards of health have considerable latitude in the exercise of their appointive power and that it is discretionary with the board whether persons shall be employed for whole or part time services.

Since there is no statutory inhibition against the same person holding the position as sanitary policeman for both the general and city health

districts, the only impediment that might possibly prevent such a relationship is the common law rule prohibiting the dual holding of offices. This rule is succinctly stated in the case of *State, ex rel. v. Gebert*, 12 C.C. (N.S.) 274, as follows:

“Offices are considered incompatible when one is subordinate 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.”

In applying the foregoing test, it is apparent that the positions in question could not possibly be subordinate to or a check upon one another since the authority to act in each case emanates from different jurisdictions.

In providing for the salary of the employe in question, it is suggested that each district draw separate warrants in payment for the services rendered for there is no authority in law permitting the commingling of district funds.

In specific answer to your inquiry, therefore, it is my opinion that a person may be employed by a general health district and a city health district at the same time to make investigations of the sanitary milk regulations of each district providing, of course, it is physically possible for the person to perform the duties of both positions.

Respectfully,

THOMAS J. HERBERT,

Attorney General.