

**Note from the Attorney General's Office:**

1970 Op. Att'y Gen. No. 70-168 was overruled by  
1981 Op. Att'y Gen. No. 81-100.

## OPINION NO. 70-168

**Syllabus:**

1. A person may properly serve as a member of a county mental health and retardation board so long as there is no actual conflict of interests.

2. No member of such Board may vote upon, take part in discussions of the Board concerning, or participate in any other manner with respect to, matters involving any agency with which he is connected.

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**To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio**  
**By: Paul W. Brown, Attorney General, December 23, 1970**

I have received your request for my opinion as to whether persons holding the following positions may properly serve as members of a county mental health and mental retardation board, hereinafter referred to as "the Board".

1. The Superintendent of a state hospital for the mentally ill.

2. A member of the board of a private agency with which the Board contracts. The agency receives approximately 75% of its funding from the Board.

3. The executive director of a school for girls which is funded for special projects by the Board.

You state in your request letter that there is no direct connection between the Board and the state hospital. However, the Board is responsible for planning and coordinating all services to the mentally ill in the county. It is, therefore, concerned with the services rendered by the hospital.

The Board is established pursuant to Sections 340.01, et seq., Revised Code, to provide community services for the mentally ill, mentally retarded and emotionally disturbed persons. Section 340.02, Revised Code, provides that each single county board shall not have less than nine and no more than fifteen members. The Commissioner of the Division of Mental Hygiene with the approval of the Director of the Department of Mental Hygiene and Correction shall appoint one-third of the members of the Board. The board of county commissioners shall appoint the remaining members. The members shall serve without compensation. This section also sets forth the qualifications of the members:

"At least two members of the board shall be practicing physicians, one of whom shall be either a psychiatrist or pediatrician, if possible, and at least one member shall be a probate judge of a participating county or his designee. Members shall be residents of the county or counties and knowledgeable and interested in mental health and mental retardation programs and facilities."

The duties of the Board are set forth in Section 340.03, Revised Code:

"Subject to rules and regulations of the commissioner of mental hygiene, the community mental health and retardation board, with respect to its area of jurisdiction, and except for programs and facilities conducted pursuant to Chapter 5127. of the Revised Code, shall:

"(A) Review and evaluate community mental health and retardation services and facilities and submit to the commissioner of mental hygiene, the board or boards of county commissioners, and the executive director of the program recommendations for reimbursement from state funds as authorized by section 5119.62 of the Revised Code and for the provision of needed additional services and facilities with special reference to the state comprehensive mental health plan;

"(B) Coordinate the planning for community mental health and retardation facilities, services and programs seeking state reimbursement;

"(C) Receive, compile, and transmit to the division of mental hygiene applications for state reimbursement;

"(D) Promote, arrange, and implement working agreements with social agencies, both public and private, and with educational and judicial agencies;

"(E) Enter into contracts with state hospitals, other public agencies, and with private or voluntary hospitals and other private or voluntary non-profit agencies for the provision of mental health and mental retardation service and facilities;

"(F) Appoint a qualified mental health specialist or qualified mental health administrator to serve as the executive director of the board on a full-time or part-time basis.

If the executive director is neither a psychiatrist nor a pediatrician, the board shall designate a qualified doctor of medicine to assume responsibility for the medical activities of the board;

"(G) Prescribe the duties of the executive director and review his performance thereof;

"(H) Approve salary schedules for employees and consultants in agencies and facilities maintained and operated, in whole or in part, or by contract, under the direction of the board;

"(I) Recruit and promote local financial support for mental health and retardation programs from private and public sources;

"(J) In the event a needed service cannot be provided by an existing public or private agency, directly operate a mental health or mental retardation facility until such time as this responsibility can be assumed by another agency;

"(K) Prescribe fees to be charged for services, not to exceed the cost of the service. Physicians and mental health professionals shall be allowed to follow and assist in the care of the patients under the direction of the director of the facility;

"(L) Establish the operating procedures of the board and submit an annual report of the programs under the jurisdiction of the board, including a fiscal accounting, to the board of county commissioners;

"(M) Establish such rules and regulations of standards and perform such other duties as may be necessary or proper to carry out Chapter 340 of the Revised Code."

The criteria for compatibility of public offices is set forth in State ex rel. Attorney General v. Gebert, 12 Ohio C. C. R. (n. s.) 274, 275 (1909):

"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."

See also: State ex rel. Hover v. Wolven, 175 Ohio St.

114 at 117 and 118 (1963); Pistole v. Wiltshire, 90 Ohio L. Abs. 525, 528 (1961).

The question of compatibility of offices does not actually arise if one of the offices involved is a private rather than a public office. Opinion No. 3440, Opinions of the Attorney General for the year 1938. However, the questions of conflict of interest and self dealing by public officers would apply whether or not the other position of the board member is a public or private office.

The General Assembly specifically provided that members of the Board be residents of the county. It also provided that members shall be "knowledgeable and interested in mental health and mental retardation programs, and facilities." The obvious intent of the General Assembly was to staff the Board with qualified experienced persons in order to provide the community with the best possible services for the mentally retarded and emotionally disturbed.

It is clear that almost everyone who possesses the qualifications for membership on the Board would be active in organizations devoted to mental health and mental retardation programs in the community. The duties of the Board, set forth in Section 340.03, supra, show that the Board has broad jurisdiction over mental health and retardation services, facilities and programs in the community. Some of its responsibilities are: to review and evaluate all mental health and retardation services and facilities in the community; to coordinate the planning for such services, facilities and programs seeking state reimbursement; and to enter into contracts with agencies to provide such services. There is, therefore, the possibility of a conflict of interest with all persons who are active in organizations devoted to mental health and retardation services. Since members of the Board serve without compensation they could not be expected to give up their work in such organizations in order to serve on the Board. In addition, this would drain qualified persons from positions where they are also needed. If the possibility of a conflict of interest would prevent persons from serving on the Board, it would exclude most of those who possess the required qualifications. This would defeat the objective of the legislation to staff the Board with qualified and experienced persons in order to provide the community with the best possible services for the mentally ill, mentally retarded and emotionally disturbed.

Legislation intended to provide needed services for the mentally ill and mentally retarded should be given a liberal construction with a view toward the accomplishment of its beneficial objectives. Sutherland, Statutory Construction, Sections 4704 and 7201. We therefore find that the General Assembly intended that the mere possibility of a future conflict of interest does not prevent a person from serving on the Board. See, e.g., Reilly v. Ozzard, 33 N.J. 529, 89 A.L.R. 2d 612 (1960).

Any public officer owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public. 43 Am. Jur. 81, Public Officers, Section 266. Any member of the Board who participated in the consideration of, or voted upon, any matter relating to an agency with which he is connected, would expose himself to conflicting duties. Such a conflict of interest is contrary to public policy. No member of the Board may therefore vote upon, take part in discussion of the Board concerning, or participate in any other manner with respect to, matters involving any agency with which he is connected.

It is my opinion and you are hereby advised that:

1. A person may properly serve as a member of a county mental health and retardation board so long as there is no actual conflict of interests.
2. No member of such Board may vote upon, take part in discussions of the Board concerning, or participate in any other manner with respect to matters involving any agency with which he is connected.