

OPINION NO. 66-118**Syllabus:**

If the tuberculosis clinic is supervised by the board of health, the positions of County Health Commissioner and Tuberculosis Clinic Physician are incompatible.

If the tuberculosis clinic is supervised by an appointed board of three trustees, there is no incompatibility between the office of County Health Commissioner and Tuberculosis

Clinic Physician unless the physician is also a member of such board.

To: J. Warren Bettis, Columbiana County Pros. Atty., Lisbon, Ohio
By: William B. Saxbe, Attorney General, July 11, 1966

I have before me your request for my opinion which reads as follows:

"My sole question is whether one and the same doctor may at the same time serve as County Health Commissioner and Tuberculosis Clinic Physician.

"Our Tuberculosis Clinic is supported and financed by a levy passed by the taxpayers of Columbiana County, Ohio. Whereas, the County Health Department is financed in accordance with the laws of the State of Ohio.

"Therefore, may I have your opinion as to whether the position of County Health Clinic is compatible with that of Tuberculosis Clinic Physician."

The usual test of compatibility was stated in the case of The State of Ohio, ex rel., Attorney General vs. Frank Gebert, 12 C.C. (N.S.), 274, which reads 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 to discharge the duties of both."

In determining the compatibility of the two positions in question, we must consider first the statute providing for the organization of the county tuberculosis clinics.

Section 339.39, Ohio Revised Code, provides as follows:

"The board of county commissioners of any county which does not operate a county tuberculosis hospital, or which has joined in the construction of a district tuberculosis hospital and in which district the joint board of county commissioners fails or refuses to maintain tuberculosis clinics as provided in section 339.36 of the Revised Code, may establish and maintain one or more tuberculosis clinics in the county, may employ physicians, public health nurses, and other persons for the operation of such clinics or other means as are provided for the prevention, cure, and treatment of tuberculosis, and may provide by tax levies, or otherwise, the necessary funds for such clinics to be established, maintained, and operated. Clinics so established shall be under the control of the board of county commissioners, and shall be supervised by

a board of three trustees, similar in all respects to and with all the powers enjoyed by a board of trustees of a county tuberculosis hospital, or by a city or general district board of health within the county, as the board of county commissioners designates."

(Emphasis added)

Section 3709.11, Ohio Revised Code, sets forth the organization of the board of a general health district and the duties of a County Health Commissioner:

"Within thirty days after the appointment of the members of the board of health in a general health district, they shall organize by selecting one of the members as president and another member as president pro tempore. The board shall appoint a health commissioner upon such terms, and for such period of time, not exceeding two years, as may be prescribed by the board. Said appointee shall be a licensed physician and shall be secretary of the board and shall devote such time to the duties of his office as may be fixed by contract with the board. Notice of such appointment shall be filed with the director of health. The commissioner shall be the executive officer of the board and shall carry out all orders of the board and of the department of health. He shall be charged with the enforcement of all sanitary laws and regulations in the district. The commissioner shall keep the public informed in regard to all matters affecting the health of the district."

(Emphasis added)

In answering your question, we will consider both possible supervisory arrangements permitted by Section 339.39, supra.

Should the tuberculosis clinic be supervised by the Board of Health, the Commissioner, according to Section 3709.11, supra, could be in the position of supervising his own performance as clinic physician; hence, the two positions would be clearly incompatible.

Should the second alternative be followed; i.e., the supervision of the tuberculosis clinic devolve upon a board of three trustees, appointed by the County Commissioners, I can find no reason for a ruling of incompatibility, unless the physician is a member of such supervisory board.

Accordingly, it is my opinion and you are hereby advised as follows:

If the tuberculosis clinic is supervised by the board of health, the positions of County Health Commissioner and Tuberculosis Clinic Physician are incompatible.

If the tuberculosis clinic is supervised by an appointed board of three trustees, there is no incompatibility between the office of County Health Commissioner and Tuberculosis Clinic Physician unless the physician is also a member of such board.