

OPINION NO. 87-092

Syllabus:

The position of member of a regional airport authority board is incompatible with the office of county engineer for a county included within the territory of the regional airport authority.

To: Dennis E. Barr, Hardin County Prosecuting Attorney, Kenton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 19, 1987

I have before me your request for my opinion regarding the compatibility of the positions of county engineer and member of the county airport authority board. 1979 Op. Att'y Gen. No. 79-111 sets forth seven criteria for determining whether two public positions are incompatible. Two positions are incompatible, if, inter alia, an individual serving in both positions would be subject to a conflict of interest. See 1970 Op. Att'y Gen. No. 70-168 at 2-336 (a public servant "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...").

I must now examine the powers and duties of the respective positions to see whether there is any material reason why an individual occupying both positions would be subject to conflicting interests or divided loyalties. Op. No. 79-111. I understand from a conversation you had with a member of my staff that the Hardin County Airport Authority Board is organized pursuant to R.C. Chapter 308. R.C. 308.03 provides:

Any two or more contiguous counties or any single county may create a regional airport authority by the adoption of a resolution by the board of county commissioners of each county to be included in the regional airport authority. Such resolution shall state:

...
 (G) The manner and to what extent the expenses of the regional airport authority shall be apportioned among the counties creating it.

Hardin County is the only county presently included within the Hardin County Airport Authority. The Hardin County Board of County Commissioners may appropriate moneys to the regional airport authority under R.C. 308.17 which provides:

The board of county commissioners of any county included within a regional airport authority may appropriate annually, from moneys to the credit of the general fund of the county and not otherwise appropriated, that portion of the expense of the regional airport authority to be paid by such county as provided in the resolution creating the regional airport authority adopted under section 308.03 of the Revised Code, or by any amendment thereto.

Pursuant to this section then, the airport authority may receive funds from the general fund of the county.

The county engineer also receives money from the general fund of the county. R.C. 315.12 provides that two-thirds of

the operating costs of the county engineer's office "shall be paid out of the county's share of the fund derived from the receipts from motor vehicle licenses...and from the county's share of the fund derived from the motor vehicle fuel tax...." You indicated to a member of my staff that a portion of the county engineer's operating costs comes from the general fund of the county. In addition, R.C. 315.11 provides:

The county engineer shall keep his office at the county seat...furnished with all necessary cases and other suitable articles at the expense of the county...The cost and expense of such equipment shall be allowed and paid from the general fund of the county upon the approval of the board. The engineer and each assistant and deputy of such engineer shall be allowed his reasonable and necessary expenses, incurred in the performance of his official duties.

In examining R.C. Chapter 308 and R.C. Chapter 315, it is apparent that a conflict may arise between the county engineer and the regional airport authority involving competition for appropriations from the county general fund. Op. No. 79-111 sets forth factors to be considered in evaluating whether a potential conflict of interest renders two positions incompatible. These factors include the degree of remoteness of a potential conflict; the ability of the individual to remove himself from the conflict; whether the positions involve decision-making authority; whether the potential conflict involves the primary functions of each position; and whether the potential conflict involves budgetary controls. *Id.* at 2-372. I note that several of these factors weigh against finding these two positions compatible. Both positions involve decision-making authority. Competition for operating funds for the airport and county engineer's office is not an unlikely possibility. Since an individual serving in these two positions could become involved in a conflict of interest over competition for appropriations from the county general fund, I conclude, in accordance with the reasoning of several of my predecessors, that the potential conflict involving funding renders these two positions incompatible. See 1972 Op. Att'y Gen. No. 72-109 (positions of the township clerk and county highway department employee are incompatible because clerk may be tempted to subordinate his interests in township budget in favor of highway department budget); 1963 Op. Att'y Gen. No. 559, p. 566 (positions of township clerk and member of board of health of a general health district are incompatible because of the possibility of competing budget requests); 1958 Op. Att'y Gen. No. 1962, p. 215 (positions of county clerk and city council member are incompatible because of the possibility of inconsistent loyalties, as both are competing for available funds).

Therefore, it is my opinion, and you are hereby advised, that the position of member of a regional airport authority board is incompatible with the office of county engineer for a county included within the territory of the regional airport authority.