

**OPINION NO. 82-016****Syllabus:**

1. Depending upon the facts involved in a particular situation, an employee of the county, including an employee of the county welfare department or of the social services division thereof, may be a foster parent.
2. The county welfare department lacks the authority to enter into a contract with an independent agency for that agency to supervise county employees who provide foster parent care.

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**To: John T. Corrigan, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio**  
**By: William J. Brown, Attorney General, March 22, 1982**

I have before me your request for my opinion in response to four questions which I have rephrased as follows:

1. May an employee of the social services division of the county welfare department become a paid foster parent for the welfare department?
2. May an employee of a division of the county welfare department other than the social services division become a paid foster parent?
3. May a county employee not employed by the county welfare department become a paid foster parent?
4. Assuming that a conflict is found in any of the above situations, may the conflict be remedied by having the county welfare department contract with a private, non-profit agency to have that agency supervise the county employees who become foster parents?

Your letter indicates that the division of social services of the county welfare department is responsible for supervising foster parents to ensure that the care provided wards of the county conforms with the rules and regulations of the county welfare department.

Questions one through three deal with the subject of compatibility. There are seven separate issues which must be addressed in any compatibility analysis. Those issues may be stated, in question form, as follows:

1. Does one position involve the exercise of political activity by a person whose other position is a classified employment such that R.C. 124.57 would be violated?
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 [im]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 would prevent one person from holding the positions in question?
7. Is there a federal, state, or local departmental regulation which would prevent one person from holding the positions in question?

In order for the positions in question to be compatible, each of the seven questions must be answered in the negative. If even one question receives an affirmative response, the positions are incompatible.

The first question concerns the ban against political activity by classified employees contained in R.C. 124.57. Although some of the employees in question may be classified employees, *see, e.g.,* R.C. 329.02, the act of foster parenting is obviously not political activity. Thus, the answer to question one is negative in all three circumstances described in your letter.

For simplicity of discussion, I will address the second and seventh questions together. These questions deal with the possible restrictions on the dual employment at issue which result from state statutes or federal, state or local regulations. I am not aware of any limitation created either by an empowering statute or by a federal, state or local regulation which would prevent the specified county employees from also serving as foster parents. Therefore, questions two and seven may also be answered in the negative.

The issue of physical impossibility, the subject of the fourth question, and the applicability of local charter provisions and ordinances, dealt with in the sixth question, involve factual considerations which are best addressed by local officials. These issues must, of course, be resolved before a final determination of compatibility can be made. However, for the purposes of this opinion, I will assume that questions four and six have also received negative answers.

Question number three asks whether one position is subordinate to or a check upon the other. In order to adequately address this issue, each of the three types of employment described in your letter must be analyzed separately.

Your first example concerns an employee of the social services division of the county welfare department. As was discussed previously, the social services division is responsible for supervising those persons who provide foster parent care. You have asked the question in general terms, encompassing all employees of the division, rather than providing job descriptions of particular individuals who propose to become foster parents. Since you have not specified the duties of the individuals to whom your question relates, I am unable to draw any definite conclusions as to whether question three of the compatibility analysis would be answered in the

affirmative under a specific set of facts. I note, however, that the potential for an employee of the social services division to act as a check upon himself in his capacity as a foster parent would exist. For example, if the employee were responsible for supervising those employees who inspect the homes of foster parents, he would obviously be acting as a check upon himself, and the positions would be incompatible. A different set of facts, however, could result in the opposite conclusion. If, for instance, the employee's sole duties consisted of answering telephones or performing maintenance functions for the division of social services, it is unlikely that he would be acting as a check upon himself as a foster parent. Thus, I can state with certainty that the potential for a negative answer to question three does exist. However, without a more specific description of the employees involved, I am unable to provide a more detailed conclusion.

Your second example is an employee of the county welfare department who is not a member of the social services division. Again, you have not been able to furnish for my consideration specific examples of county welfare department employees who intend to become foster parents. Thus, I am unable to reach any definite conclusion as to whether a particular county welfare department employee would be acting as a check upon himself as a foster parent. I note that, while the potential for such a checking function is more remote in this example it may, nonetheless, be found to exist. For instance, if the employee were an administrator who supervised several divisions of the welfare department, including the social services division, he clearly would be acting as a check upon himself and the positions would be incompatible. Alternatively, if the employee's duties were related only to a subject separate from the foster parent program, such as the distribution of food stamps, he clearly would not be serving as a check upon himself in his capacity as a foster parent. When dealing with a particular individual, further inquiry must be made into the exact nature of that person's duties as a county employee and how those duties relate to the foster parent program. For the purposes of this opinion, however, I will assume that, in this instance, question three can be answered in the negative.

A county employee, other than a county welfare department employee, is the third example set forth in your letter. It is possible that a county employee might act as a check upon himself in his capacity as a foster parent even though he is not a member of the county welfare department or its social services division. For example, a county employee whose duties involved auditing the records of amounts paid by the county welfare department to foster parents might be acting as such a check upon himself. Whether this is true of a particular employee is a question which can only be answered after a thorough examination of that employee's duties. Consequently, although I can state that the potential for a negative answer to question three does exist, I cannot offer a more definite conclusion without a specific understanding of the duties performed by the particular employee involved.

Question five concerns a possible conflict of interest between the two positions. The test for a conflict of interest is designed to prevent the person who is serving in two capacities from experiencing divided loyalties which would adversely affect the performance of his official duties. 1979 Op. Att'y Gen. No. 79-111. With regard to your first example, an employee of the social services division of the county welfare department, the potential for a conflict of interest results from the fact that the social services division controls the operation of the foster parent program. However, without knowing the nature of the duties which the employee performs for the social services division, it is impossible to determine whether this potential for conflict would, in the case of a particular employee, rise to an impermissible level. A more detailed understanding of the employee's function in the social services division would be necessary before one could make such a determination. An examination of this function must ultimately be made by your office. However, for the purposes of this opinion I will assume that you are able, in considering a particular set of circumstances under your first example, to answer question five in the negative.

Your second and third examples concern employees of a division of the county

welfare department other than the social services division and employees of the county, other than the welfare department. As was previously discussed in answer to question three, it is possible that there would be no connection between the duties or interests of such employees and those of a foster parent. Thus, there would be no risk of the divided loyalties which are the result of a conflict of interest. This conclusion is, of course, based on an analysis of the general duties of the welfare department and county government. It is possible, however, that the duties of a particular employee of the county or the county welfare department might require him to have a direct or indirect involvement in the foster parent program. This involvement could result in an impermissible conflict of interest. Your office has not been able to provide me with the specific positions of those employees who intend to become foster parents. I am, therefore, unable to draw more definite conclusions. While a final examination of the duties of those persons interested in becoming foster parents must be made by your office, I will assume, for the purposes of this opinion, that no conflict exists in the situation involved in your second and third examples and that you are able to answer question five in the negative.

As outlined above, I have found that the application of the seven questions set forth at the beginning of this opinion to your examples may, depending upon the facts involved in a particular instance, result in a negative response to all questions. Thus, subject to future factual determinations which must be made by your office, it may be concluded that an employee of the county, including an employee of the county welfare department or the social services division thereof, may be a foster parent.

Your final question asks whether, assuming a conflict exists, it may be remedied by the county welfare department contracting with a private non-profit agency to supervise the foster care provided by county employees. It is a basic rule of statutory construction that an administrative unit of government, such as a county welfare department, has only those powers which are expressly granted or necessarily implied. See State ex rel. Godfray v. McGinty, 66 Ohio St. 2d 113, 419 N.E.2d 1102 (1981). With regard to the foster parent program, the Cuyahoga County welfare department performs the functions of a children services board, and possesses the powers normally accorded such a board. R.C. 5153.07. Thus, the power to contract with an independent agency must, if it exists, be found in R.C. Chapter 5153. An examination of R.C. Chapter 5153 discloses no express power to contract with an independent agency to supervise county employees who act as foster parents. Moreover, I can see no way in which such authority can be implied from any express power granted by R.C. Chapter 5153. Thus, I must conclude that a county welfare department may not contract with an independent agency for that agency to supervise county employees who serve as foster parents. Due to the fact that the county welfare department lacks the authority to enter into such a contract, it is unnecessary to determine whether such a contract would eliminate any conflict of interest which might exist.

Therefore, it is my opinion, and you are advised, that:

1. Depending upon the facts involved in a particular situation, an employee of the county, including an employee of the county welfare department or of the social services division thereof, may be a foster parent.
2. The county welfare department lacks the authority to enter into a contract with an independent agency for that agency to supervise county employees who provide foster parent care.