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OHIO CIVIL RIGHTS COMMISSION — MEMBER OF CITY PLANNING COMMISSION AND MEMBER OF CIVIL RIGHTS COMMISSION—NOT INCOMPATIBLE. §§713.01, 4112.03, R.C.

SYLLABUS:

The offices of member of a city planning commission, appointed pursuant to Section 713.01, Revised Code, and of member of the Ohio civil rights commission, appointed pursuant to Section 4112.03, Revised Code are compatible and may be held by one and the same person.

Columbus, Ohio, October 5, 1959

Hon. R. S. Dickey, Member, Ohio Civil Rights Commission
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“On July 29, 1959, I was appointed by Governor Michael V. DiSalle to membership on the Ohio Civil Rights Commission.

“At the time of the above appointment, I was serving as a member of the Cleveland City Planning Commission.

“I have been advised by the Director of Law of the City of Cleveland to request a ruling from you as to whether there would be any conflict of interest resulting from my continuing to serve as a member of the City Planning Commission while holding membership on the Ohio Civil Rights Commission. Membership on the City Planning Commission is without pay and appointment thereto is made by the Mayor without the consent of the Cleveland City Council.”

Section 713.01, Revised Code, provides for the establishment of planning commissions in cities, members to serve terms without compensation. Sections 713.02 to 713.14, Revised Code, contain the powers and duties of planning commissions and relate generally to plans, platting and zoning of municipal corporations.

Section 4112.03, Revised Code, provides for the creation of the Ohio civil rights commission, members to serve terms with compensation of \$5,000 per year. Sections 4112.01 to 4112.08, inclusive, Revised

Code, designate the powers and duties of the members of the commission, such dealing specifically with elimination of discrimination in employment against persons because of their race, color, religion, national origin or ancestry.

On reviewing the statutes involved I find no prohibition against a person serving on a city planning commission and on the state civil rights commission at the same time. Thus, the question arises whether such positions are incompatible at common law. It has been said that the test of incompatibility is not only whether it is physically possible for one person to perform the duties of each position but also whether the functions of the office are inconsistent. Offices are considered incompatible when one is subordinate to, or in any way a check up—on the other. *State, ex rel. Attorney General v. Gebert*, 12 C. C. (N.S.), 274; *Allison v. Baynes*, 65 Ohio Law Abs., 495.

Regarding the instant question I do not believe that either of the offices is subordinate to, or a check upon the other. I am aware that a planning commission may hire certain personnel and thus might come within the purview of Sections 4112.01 to 4112.08, inclusive, Revised Code. I am of the opinion, however, that the chances of a conflict because of this reason are rather remote and not of sufficient cause to render incompatible the positions in question.

While the question of physical impossibility of performing both jobs depends on the actual fact situation, there does not appear to be any reason why it should be physically impossible for one person to discharge the duties of both offices, neither office being a full-time job.

Accordingly, in specific answer to your question, it is my opinion that the offices of member of a city planning commission, appointed pursuant to Section 713.01, Revised Code, and of member of the Ohio civil rights commission, appointed pursuant to Section 4112.03, Revised Code, are compatible and may be held by one and the same person.

Respectfully,

MARK McELROY

Attorney General