

## OPINION NO. 70-005

**Syllabus:**

The office of the director of the county department of welfare and the office of executive secretary or administrator of the county board of mental retardation are compatible so long as the individual holding these positions simultaneously can discharge the duties of both offices.

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**To: George F. Burkhart, Monroe County Pros. Atty., Woodsfield, Ohio**  
**By: Paul W. Brown, Attorney General, January 21, 1970**

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

"May the director of a county welfare department also serve as the administrator or executive secretary of a county board of mental retardation?"

There is neither a statutory prohibition nor an Ohio constitutional prohibition against the same person holding simultaneously the position of director of a county welfare department and the position of executive secretary or administrator of a county board of mental retardation. The common law rule established in State, ex rel. Attorney General v. Gebert, 12 C.C. (N.S.) 274 at page 275, 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 person to discharge the duties of both."

Section 5126.04, Revised Code, provides that the administrator or executive secretary of a county board of mental retardation shall be appointed by such board and shall be subject to the rules of such board. Section 329.02, Revised Code, provides that the county director of welfare shall be under the control and direction of the board of county commissioners. The county board of mental retardation, on the other hand, is subject to the rules, regulations and standards of the commissioner of mental hygiene. Section 5126.03, Revised Code.

It is apparent, therefore, that neither position is "subordinate to, or in any way a check upon, the other," State, ex rel. Attorney General v. Gebert, supra.

Since both positions in question are subject to rules and regulations of separate boards insofar as duties required of each position, each of those boards should make a determination as to whether or not the positions subject to their rules is a full-time position.

Therefore, it is my opinion and you are hereby advised that the office of the director of the county department of welfare and the office of executive secretary or administrator of the county board of mental retardation are compatible so long as the individual holding these positions simultaneously can discharge the duties of both offices.