

Note from the Attorney General's Office:

1973 Op. Att'y Gen. No. 73-064 was questioned by
1988 Op. Att'y Gen. No. 88-033.

OPINION NO. 73-064**Syllabus:**

The positions of member of the board of county commissioners and member of the board of commissioners for a park district covering the entire county are compatible.

To: Joseph Loha, Jefferson County Pros. Atty., Steubenville, Ohio
By: William J. Brown, Attorney General, June 27, 1973

Your request for my opinion reads in part as follows:

The Board of County Commissioners of Jefferson County, Ohio are about to create a county-wide Park District in our county under Chapter 1545 of the Revised Code of Ohio and more particularly as permitted by the newly amended Code Section No. 1545.02.

I was requested to inquire of your office for an opinion as to the compatibility

of the appointment of a holder of the elected position of county commissioner to that of the three member panel of the Board of Commissioners of the Park District consisting of a county-wide area?

Under Section 1545 the Probate Judge, after the Park District is created, has the authority to appoint the members of the Board of Commissioners of the Park District.

I find no constitutional or statutory provision to prevent one individual from serving simultaneously on a board of county commissioners and on the board of commissioners of a park district covering the same county. Resort must be had, therefore, to the common law test of incompatibility. See Opinion No. 73-024, Opinions of the Attorney General for 1973, and Opinion No. 73-016, Opinions of the Attorney General for 1973.

The test applied in determining incompatibility is set forth in State ex rel., Attorney General v. Gebert, 12 Ohio C.C.R. (n.s.) 274, 275, 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.

I am assuming there is no physical impossibility in your situation. If that is so, then some authorities suggest that one test of incompatibility is whether the incumbent of one office has the power of appointment to the other office, or the power to remove its incumbent. See Phlinger v. Clark, 117 Tex. 537 (1928), Attorney General, ex rel., Foreland v. Detroit Common Council, 112 Mich. 145 (1897). But a board of county commissioners has no authority to appoint park commissioners for R.C. 1545.05 provides:

Upon the creation of a park district,
the probate judge shall appoint three
commissioners * * *.

And removal of the park commissioner is governed by R.C. 1545.06 which provides:

Any park commissioner may be removed
at the discretion of the probate judge,
either upon complaint filed with such judge
or upon his own motion.

Since the probate judge has the power to appoint and to remove, the two offices in question are not incompatible by this test.

Another way of determining whether one office is subordinate is whether reports from one must be submitted to the other for some kind of approval. There is nothing in the statutory provisions governing the park district that requires submission of any report to the board of county commissioners. R.C. 1545.08 does provide:

The board of park commissioners shall
compile and publish reports and information

relating to the park district and to the proceedings and function of the board. The board shall keep an accurate and permanent public record of all its proceedings.

Although this section requires reports of the park commission to be published, there is nothing to indicate that the board of county commissioners is to be a recipient of such report or is to take any action upon them.

A third method of determining compatibility is to determine whether the duties or powers of one office conflict in any manner with those of the other. The powers of the board of park commissioners appear in R.C. 1545.07 which provides:

The commissioners appointed in accordance with section 1545.05 of the Revised Code shall constitute the board of park commissioners of the park district. Such board shall be a body politic and corporate and may sue and be sued as provided in sections 1545.01 to 1545.28, inclusive, of the Revised Code. Such board may employ a secretary and such other employees as are necessary in the performance of the powers conferred in such sections. For the purposes of acquiring, planning, developing, protecting, maintaining, or improving lands and facilities thereon under section 1545.11 of the Revised Code, and for other types of assistance which it finds necessary in carrying out its duties under Chapter 1545. of the Revised Code, the board may hire and contract for professional, technical, consulting and other special services, and may purchase goods. In procuring any goods the board shall contract as a contracting authority under sections 307.86 to 307.91, inclusive, of the Revised Code, to the same extent and with the same limitations as a board of county commissioners. In procuring services, the board shall contract in the manner and under procedures established by the bylaws of the board as required in section 1545.09 of the Revised Code.

(Emphasis added.)

Under R.C. 1545.09 the board of park commissioners must adopt bylaws, rules, and regulations as it deems advisable. The park commissioners have the power to acquire and to dispose of land, R.C. 1545.11-1545.12, and they may exercise police powers within, and adjacent to, the lands under their jurisdiction. R.C. 1545.13. Finally, they have the power to make assessments, to levy taxes, and to issue bonds. R.C. 1545.18-1545.25.

The powers of the board of county commissioners are found generally in R.C. Chapters 307, 301 and 305. In regard to the board's relation to the parks commission, R.C. 301.26 provides:

The board of county commissioners of any county may acquire, construct, improve,

maintain, operate, and protect parks, parkways, and forests, and provide an agency for their administration. For such purposes the board may acquire real estate in fee or a lesser interest, and may receive and execute the terms of gifts and bequests of money, lands, or other properties. In addition to other powers the board of county commissioners has the same powers with respect to county parks, parkways, and forests as the board of commissioners of a park district, established under section 1545.01 of the Revised Code, would have as to the park district under its jurisdiction.

This section does not apply to any portion of a county included within a park district established under sections 1545.01 to 1545.28, inclusive, of the Revised Code.
(Emphasis added.)

It is clear from an examination of these Sections of the Revised Code that the General Assembly intended that the powers of the board of park commissioners be exercised in complete independence of the board of county commissioners. The county commissioners originally have power over all park land in the county. But once a park district is created, the authority of the county commissioners over the park lands within that district passes to the board of park commissioners and, under the last sentence of P.C. 301.26, the authority of the county commissioners is specifically revoked. The situation here is distinguishable from that in Opinion No. 73-032, Opinions of the Attorney General for 1973, in which I held that one individual could not be employed at the same time by both a regional planning commission and a parks commission because of the interlocking statutory duties of those two bodies.

In specific answer to your question it is my opinion, and you are so advised, that the positions of member of the board of county commissioners and member of the board of commissioners for a park district covering the entire county are compatible.