

OPINION NO. 85-045**Syllabus:**

The positions of amusement ride inspector and member of a municipal civil service commission are compatible, provided that it is physically possible for one person to perform the duties of both positions.

To: Dale L. Locker, Director, Ohio Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 8, 1985

I have before me your request for my opinion inquiring into the compatibility of the positions of amusement ride inspector for the Department of Agriculture and member of a municipal civil service commission.

Compatibility questions arise when one individual holds or wishes to hold two public positions. 1979 Op. Att'y Gen. No. 79-111 sets forth the seven issues which must be analyzed in determining whether two public positions are compatible as follows:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
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 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 are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

Questions number six and number seven are of local concern, and I assume for purposes of this opinion that there are no departmental regulations or other local provisions which limit the holding of outside employment by a ride inspector or a municipal civil service commissioner.

Question number one concerns the application of R.C. 124.57, which prohibits "employee[s] in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships" from taking part in political activity other than to vote and to express their political opinions. R.C. 124.57 prohibits an employee in the classified service from being a candidate for public office in a partisan election. See 1982 Op. Att'y Gen. No. 82-085.

A member of a municipal civil service commission is not in the classified

service. See R.C. 124.11(A)(3); R.C. 124.40. Thus, R.C. 124.57 has no application to a member of a municipal civil service commission.

In your letter of request you have informed me that the position of amusement ride inspector is in the classified service of the state. See R.C. 124.11(B). Thus, such an employee is subject to the prohibition of R.C. 124.57. A municipal civil service commissioner, however, is appointed by the mayor or other chief appointing authority of the city, R.C. 124.40(A), and is not elected in a partisan election. Thus, a classified employee is not prohibited from serving as a municipal civil service commissioner.

With regard to question number two, whether the empowering statutes of either position limit outside employment, I note that R.C. 124.40, which provides for the appointment of members of a municipal civil service commission, places no restrictions on the outside employment of commission members. R.C. 1711.53(D), which establishes the position of amusement ride inspector within the Department of Agriculture, provides that no person may inspect an amusement ride if, within six months prior to the date of inspection, he was an employee of the owner of the ride. R.C. 1711.53 contains no other restrictions on the outside employment of persons who are employed by the Director of Agriculture as ride inspectors.¹ Thus, there are no statutory provisions limiting the outside employment of a civil service commissioner or amusement ride inspector which prohibit one person from holding both positions.

Question number three is whether one position is subordinate to, or a check upon, the other and question number five is whether there is a conflict of interest between the two positions. See State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274, 275 (Cir. Ct. Franklin County 1909). In order to analyze these issues, it is necessary for me to examine the duties and powers of both positions.

R.C. 1711.50-.57 provide for the regulation of amusement park rides. An owner of an amusement ride must, prior to the operation of the ride and annually thereafter, apply for and receive a permit from the Department of Agriculture. R.C. 1711.53(A). Prior to issuing a permit the Department must inspect the amusement ride. Id. See R.C. 1711.53(B) ("[t]he department shall, pursuant to Chapter 119. of the Revised Code, adopt such rules for the safe operation and inspection of all amusement rides as are necessary for amusement ride safety and for the protection of the general public"); R.C. 1711.53(F), (G), and R.C. 1711.55(E) (providing for additional inspections). R.C. 1711.53(D) provides for the employment of amusement ride inspectors and reads as follows:

The director shall employ a chief inspector and such additional inspectors and employees as may be necessary to administer and enforce sections 1711.50 to 1711.57 of the Revised Code. The director may appoint or contract with other persons to perform inspections of amusement rides provided that such persons meet the qualifications for inspectors established by the rules adopted under division (B) of this section and are not owners, or employees of owners, of any amusement ride subject to inspection under sections 1711.50 to 1711.57 of the Revised Code. No person shall inspect an amusement ride who,

¹ R.C. 1711.53(D) provides for the employment of ride inspectors by the Director of Agriculture, and also provides that the Director "may appoint or contract with other persons to perform inspections of amusement rides." A person who is appointed by, or who enters into a contract with, the Director to perform inspections is prohibited from being an owner, or an employee of an owner, of an amusement ride subject to inspection, as well as from inspecting an amusement ride, if within six months prior to the date of the inspection, he was an employee of the owner of the ride. It is my understanding that the individual in question was not hired pursuant to contract, but rather, is an employee of the Department.

within six months prior to the date of inspection, was an employee of the owner of the ride.

See 1 Ohio Admin. Code 901-11-03.

The structure and duties of a municipal civil service commission are set forth in R.C. 124.40. Members are appointed by the mayor or other chief appointing authority of the city. The chief executive authority of the city may remove members for those reasons set forth in R.C. 124.40(A). The expenses and salaries of municipal civil service commissioners are determined by the legislative authority of the city. R.C. 124.40 sets forth the duties of a municipal civil service commission as follows:

Such municipal civil service commission shall prescribe, amend, and enforce rules not inconsistent with this chapter for the classification of positions in the civil service of such city and city school district, and all the positions in the city health district; for examinations and resignations therefor; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements therein; and for standardizing positions and maintaining efficiency therein. The municipal civil service commission shall exercise all other powers and perform all other duties with respect to the civil service of such city, city school district, and city health district, as prescribed in this chapter and conferred upon the director of administrative services and the state personnel board of review with respect to the civil service of the state; and all authority granted to the director and the board with respect to the service under their jurisdiction shall, except as otherwise provided by this chapter, be held to grant the same authority to the municipal civil service commission with respect to the service under its jurisdiction. . . .

. . . .

Each municipal civil service commission shall make reports from time to time, as the board requires, of the manner in which the law and the rules and regulations thereunder have been and are being administered, and the results of their administration in such city, city school district, and city health district. A copy of the annual report of each such municipal civil service commission shall be filed in the office of the board as a public record.

From an examination of the duties of an amusement ride inspector and municipal civil service commissioner, it is clear that neither position is a check upon, or subordinate to, the other, and that the duties of the two positions do not conflict. An amusement ride inspector is appointed by and responsible to the Director of Agriculture, a state officer. An inspector's duties involve the inspection of amusement rides. A municipal civil service commissioner is appointed by and responsible to the chief executive authority of the city, and is charged with administering the civil service system of the city, city school district, and city health district. Neither position supervises or in any way regulates the other, and the duties of each position are performed independently of the other. I can conceive of no situation in which the interests of the two positions would conflict.

Question number four is whether it is physically possible for one person to discharge the duties of both positions. In answering this question it is necessary to take into account the time demands of each position. Op. No. 79-111. In your letter of request, you state that the individual in question would be expected to serve in a full time capacity as an amusement ride inspector, but that the municipal civil service commission meets only once a month. Thus, it appears that if the individual is able to perform his duties as a member of the municipal civil service commission at times other than when he is expected to perform the duties of amusement ride inspector, it would be physically possible for him to perform the duties of both positions. See generally 1964 Op. Att'y Gen. No. 64-1421; 1959 Op. Att'y Gen. No. 1031, p. 708. I leave the final determination of physical impossibility, however, to those individuals who are involved in this matter on the

local level, since such persons have a more accurate idea of the time demands which would be placed on an individual who held both positions. See Op. No. 79-III.

In conclusion, it is my opinion, and you are advised, that the positions of amusement ride inspector and member of a municipal civil service commission are compatible, provided that it is physically possible for one person to perform the duties of both positions.