

**OPINION NO. 83-090****Syllabus:**

A director of a county board of elections may also serve as a member of a municipal civil service commission, even though the municipality is located within the county served by the board of elections.

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**To: Michael Ward, Athens County Prosecuting Attorney, Athens, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 20, 1983**

This opinion is in response to your question whether the position of director of a county board of elections is compatible with the position of member of a municipal civil service commission when the municipality is located within the county served by the board of elections.

1979 Op. Att'y Gen. No. 79-III 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?

I assume for purposes of this opinion that it is physically possible for one person to hold both positions, see Op. No. 79-III, and that there are no applicable local provisions.

Turning to issue one, R.C. 124.57 prohibits classified employees from participating in partisan political activity. Neither the director of a county board of elections nor a member of a municipal civil service commission is in the classified service, see R.C. 124.11(A)(2) and (3); R.C. 124.40; R.C. 3501.09; R.C. 3501.14. Thus, R.C. 124.57 does not prohibit one person from holding both positions.

Turning to issue two, whether the empowering statutes of either position limit permissible, outside employment, I note that R.C. 124.40, which provides for the members of a municipal civil service commission, places no restrictions on the outside employment of members. Pursuant to R.C. 3501.09, the director of a board of elections may not be a member of the board. The only other statutory limitation on the outside employment of a director of a board of elections is found in R.C. 3501.15, which states that no person shall serve as a director of a county board of elections "who is a candidate for any office to be filled at an election, except the office of delegate or alternate to a convention, member of the board of directors of a county agricultural society, presidential elector, or a member of a party committee." Pursuant to R.C. 124.40, members of a municipal civil service commission are appointed by the mayor or other chief appointing authority of the city. Thus, there are no statutory provisions limiting the outside employment of a

board of elections director or civil service commissioner which prohibit one person from holding both positions.

I will address issues three and five together, whether one position is subordinate to, or a check upon the other, and whether there is a conflict of interest between the two positions. As noted above, R.C. 124.40 provides that members of a municipal civil service commission are appointed by the mayor or other chief appointing authority of the city. The chief executive authority of the city may remove a member for the reasons set forth in R.C. 124.40. The expenses and salaries of members are determined by the legislative authority of the city. R.C. 124.40.

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.

A director of a county board of elections is appointed by the board, and must be a resident elector of the county, but may not be a member of the board. R.C. 3501.09. A director serves for two year terms, at the pleasure of the board. R.C. 3501.09, R.C. 3501.14, and the compensation of a director is fixed by the board. R.C. 3501.14. The Secretary of State has the authority to remove a director for the reasons set forth in R.C. 3501.16.

R.C. 3501.13 sets forth the duties of a director of a county board of elections as follows:

The director of the board of elections shall keep a full and true record of the proceedings of the board and of all moneys received and expended; file and preserve in its office all orders and records pertaining to the administration of registrations, primaries, and elections; receive and have the custody of all books, papers, and property belonging to the board; and shall perform such other duties in connection with his office and the proper conduct of elections as the board determines.

. . . .

The director may administer oaths to such persons as are required by law to file certificates or other papers with the board, to

judges and clerks of elections, to witnesses who are called to testify before the board, and to voters filling out blanks at the board's offices. The records of the board and papers and books filed in its office are public records and open to inspection under such reasonable regulations as shall be established by the board. . . .

In sum, members of a municipal civil service commission administer the civil service system of the city, city school district, and city health district. A director of a county board of elections performs clerical and ministerial duties pertaining to the activities of the board of elections and administers oaths to various persons having business with the board. I can conceive of no way in which the duties of a member of a municipal civil service commission and director of a board of elections would conflict, nor does it appear that the duties are such that one position is subordinate to, or a check upon, the other. Each position serves a different political subdivision. Neither position deals with the other, nor is there a common ground of activity between the two. Cf. 1914 Op. Att'y Gen. No. 839, vol. I, p. 404 (a member of a municipal civil service commission may not hold a position with the city or city school district which has the power of appointment, promotion, or removal, nor may a commission member hold a classified position in the city or city school district).

In light of the foregoing, I conclude that the positions of member of a civil service commission and director of a county board of elections are compatible. This position is consistent with the conclusion reached in 1959 Op. Att'y Gen. No. 224, p. 114, wherein it was concluded that because neither position was subordinate to, or a check upon the other, a member of a municipal civil service commission could also serve as the clerk (now director) of a board of elections. See 1911 Op. Att'y Gen. No. 239, vol. II, p. 1540 (the positions of member of a board of elections and municipal civil service commissioner are compatible, since the duties of the two positions in no way conflict, nor is it possible for the functions of the positions to be exercised upon the same subject matter). Cf. 1963 Op. Att'y Gen. No. 39, p. 119 (the positions of member of a municipal civil service commission and township trustee are compatible).

In conclusion, it is my opinion, and you are advised, that a director of a county board of elections may also serve as a member of a municipal service commission, even though the municipality is located within the county served by the board of elections.

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<sup>1</sup> Prior to the passage of 1977-1978 Ohio Laws, Part I, 1876 (Am. H.B. 86, eff. August 26, 1977), the director of a board of elections was called the clerk of the board. See Am. Sub. H.B. 1062, 113th Gen. A. (1980) (eff. March 23, 1981) (amending various statutes so as to refer to the director of a board of elections, rather than to the clerk of the board).