

OPINION NO. 2011-029**Syllabus:**

2011-029

1. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a board of health of a combined general health district within the same county.

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2. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a veterans service commission within the same county.
3. A person may not serve simultaneously as a member of a board of health of a combined general health district and member of a veterans service commission within the same county.
4. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545, member of a board of health of a combined general health district, and member of a veterans service commission within the same county.

To: Daniel G. Padden, Guernsey County Prosecuting Attorney, Cambridge, Ohio

By: Michael DeWine, Ohio Attorney General, August 8, 2011

You have requested an opinion regarding the compatibility of the positions of member of a board of park commissioners of a park district created pursuant to R.C. Chapter 1545, member of a board of health of a combined general health district formed pursuant to R.C. 3709.07, and member of a veterans service commission within the same county. For the reasons discussed below, we reach the following conclusions:

1. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a board of health of a combined general health district within the same county.
2. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a veterans service commission within the same county.
3. A person may not serve simultaneously as a member of a board of health of a combined general health district and member of a veterans service commission within the same county.
4. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545, member of a board of health of a combined general health district, and member of a veterans service commission within the same county.

Conflicts of Interest Rule

A seven-question compatibility test is used to determine whether a person

may serve simultaneously in multiple public positions. *See, e.g.*, 2009 Op. Att’y Gen. No. 2009-018, at 2-127 to 2-128. Pursuant to this test, two public positions are incompatible if an individual holding the positions is subject to impermissible conflicts of interest. *E.g.*, 2008 Op. Att’y Gen. No. 2008-024, at 2-253; 2008 Op. Att’y Gen. No. 2008-022, at 2-233 to 2-234. An impermissible conflict of interest exists when the duties of each position subject a person who holds those positions simultaneously to divided loyalties, conflicting duties, or the temptation to act other than in the public’s best interest. *E.g.*, 2008 Op. Att’y Gen. No. 2008-024, at 2-254; 2008 Op. Att’y Gen. No. 2008-022, at 2-234.

Whether an impermissible conflict of interest exists between multiple public positions is determined by reviewing the powers, duties, and responsibilities of each position. *E.g.*, 2008 Op. Att’y Gen. No. 2008-024, at 2-253; 2008 Op. Att’y Gen. No. 2008-022, at 2-234. If the review discloses any conflicts of interest, we next consider the immediacy of each potential conflict to determine whether the conflict may be sufficiently avoided or eliminated so as to allow a person to serve in the positions simultaneously. *Id.* The factors considered in making this determination include the probability of the conflicts arising, the ability of the person to remove himself from any conflicts that may arise, whether the person exercises decision-making authority in each position, and whether the conflicts relate to the primary functions of each position or to financial or budgetary matters. *Id.*

Duties of Positions

Board of Park Commissioners of Park District Formed Pursuant to R.C. Chapter 1545

A board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 has various powers and duties related to the government of the park district. R.C. 1545.09-.18. For example, a board of park commissioners has the power to acquire and dispose of land (R.C. 1545.11-.12), to create parks, parkways, forest reservations, and other reservations (R.C. 1545.11), to exercise police powers within, and adjacent to, the lands under the board’s jurisdiction (R.C. 1545.13-.132), and to adopt bylaws and rules to preserve order and protect property within the district (R.C. 1545.09). A board of park commissioners also has authority to levy taxes, subject to certification or modification of the levy by the county budget commission (R.C. 1545.20), to submit a levy directly to the electors of the park district (R.C. 1545.21), and to issue notes or bonds (R.C. 1545.211; R.C. 1545.24).

Additionally, for purposes of R.C. Chapter 5705 (tax levy law), a park district is a taxing unit. R.C. 5705.01(H); R.C. 5705.28. A board of park commissioners must, therefore, prepare, adopt, and submit an annual tax budget to the county budget commission. R.C. 5705.01(H); R.C. 5705.28; *see also* R.C. 5705.31; R.C. 5705.32; 2000 Op. Att’y Gen. No. 2000-025, at 2-171.

Board of Health of a Combined General Health District

The powers and duties of a board of health of a combined general health district are set forth primarily in R.C. Chapter 3707, governing boards of health,

and R.C. Chapter 3709, governing health districts.¹ Generally, a board of health is charged with preserving the health and safety of persons within the health district. *See* R.C. 3701.56; R.C. 3709.21; R.C. 3709.22; R.C. 3709.26; 2003 Op. Att’y Gen. No. 2003-015, at 2-113. For example, a board of health is required to abate and remove all nuisances within its jurisdiction (R.C. 3707.01; R.C. 3707.03), inspect the sanitary conditions of public buildings (R.C. 3707.26; R.C. 3709.22; R.C. 3709.26), and control the spread of communicable diseases (R.C. 3707.04-.25; R.C. 3707.29-.32; R.C. 3709.22). Additionally, a board of health may establish other health-related programs or services, such as free vaccinations (R.C. 3707.27) and home health care services (R.C. 3709.15). In order to discharge these duties, a board of health may make orders and regulations that are necessary for its own government, the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. R.C. 3707.01; R.C. 3709.20-.21; R.C. 3714.12; *see also* 2003 Op. Att’y Gen. No. 2003-015, at 2-113.

A combined general health district may obtain funding from various sources, including a subsidy from the state, fees from providing services, or grants for various purposes. R.C. 3709.09; R.C. 3709.28; R.C. 3709.282-.283; R.C. 3709.29; R.C. 3709.32. Local funding is obtained from taxes within the ten-mill limitation levied by the townships and municipal corporations within the combined general health district.² R.C. 3709.28. The board of health of a combined general health district must submit an itemized appropriation measure and an estimate of its sources of revenue to the county auditor for submission to the county budget commission. *Id.* The budget commission may reduce, but not increase, any item in the submitted appropriation measure. *Id.*

Veterans Service Commission

Each county has a veterans service commission (VSC) that is responsible for providing financial assistance and other aid to veterans and their families. R.C. 5901.02; *see also* R.C. 5901.03; R.C. 5901.08; R.C. 5901.15. To carry out its duties, a VSC is authorized to operate and staff a veterans service office (R.C. 5901.03(A));

¹ Ohio is divided into health districts, one or more of which may combine to form a single district. R.C. 3709.01; R.C. 3709.07. The health district about which you inquire, the Cambridge-Guernsey County Health District, is a combined general health district formed under R.C. 3709.07. 2010 Op. Att’y Gen. No. 2010-023, at 2-162. Unless otherwise provided, statutory provisions applicable to general health districts also are applicable to combined general health districts. *Id.* at 2-163.

² In Ohio, property may not be taxed in excess of one percent of its true value in money for state and local purposes unless approved by the voters or as provided for by a municipal charter. Ohio Const. art. XII, § 2; *see also* 2006 Op. Att’y Gen. No. 2006-034, at 2-313 n.5. This is known as the “ten-mill limitation.” 2006 Op. Att’y Gen. No. 2006-034, at 2-313 n.5; *see also* R.C. 5705.02-.03; R.C. 5705.07. A subdivision’s taxing authority may levy property taxes within the ten-mill limitation for the purpose of paying the current operating expenses of the subdivision. R.C. 5705.03(A); *see also* 2006 Op. Att’y Gen. No. 2006-034, at 2-313 n.5.

R.C. 5901.06-.07; R.C. 5901.11), establish outreach programs and coordinate with other agencies to enhance the availability of services to veterans within the county (R.C. 5901.03(E)), and establish policies and procedures for the administration of the commission and the veterans service office as well as for the administration of assistance provided to veterans and their families (R.C. 5901.03(B)-(C)). With regard to financial assistance, a VSC accepts applications and determines whether to award an allowance to veterans and their qualified dependents. R.C. 5901.08-.09; R.C. 5901.14. Providing assistance for veterans and their qualified dependents also may include emergency assistance, financial or otherwise, and may include making mortgage payments or payments to a grocer for food. *See* 2008 Op. Att’y Gen. No. 2008-033, at 2-339 (citing 1994 Op. Att’y Gen. No. 94-062 (syllabus, paragraph 1) and 1932 Op. Att’y Gen. No. 4821, vol. III, p. 1398).

A VSC is funded through a tax levy made by the board of county commissioners. R.C. 5901.11; *see also* R.C. 5705.04(A); 2008 Op. Att’y Gen. No. 2008-033, at 2-339 to 2-342. After estimating the amount necessary for the aid and financial assistance of eligible persons and for the operation of the veterans service office, the VSC must prepare and submit an itemized budget to the board of county commissioners. R.C. 5901.11; *see also* R.C. 5705.28(C). The amount requested must be within five-tenths of a mill per dollar on the assessed value of property of the county. R.C. 5901.11.

The board of county commissioners may review the VSC’s proposed budget and is then required to provide the necessary funding. R.C. 5901.11; *see also* 2008 Op. Att’y Gen. No. 2008-033, at 2-340. The board of county commissioners must approve the proposed budget so long as the request is lawful and does not exceed the five-tenths mill limitation. *Lynch v. Gallia County Bd. of Comm’rs*, 79 Ohio St. 3d 251, 680 N.E.2d 1222 (1997) (syllabus); *State ex rel. Atkins v. Harrison County Veterans Serv. Comm’n*, Mahoning App. No. 09-HA-7, 2010-Ohio-3160, 2010 Ohio App. LEXIS 2648, at ¶16 (June 30, 2010); 2008 Op. Att’y Gen. No. 2008-033, at 2-340. The board of county commissioners now has “a very limited function in approving a VSC’s budget—the Board could *review* a budget to ensure that it conformed to statutory requirements, but it could not unilaterally *revise* a lawful budget.” *State ex rel. Atkins v. Harrison County Veterans Serv. Comm’n*, 2010-Ohio-3160, 2010 Ohio App. LEXIS 2648, at ¶17. After approving the budget, the board of county commissioners is required to levy the necessary property tax to raise the amount needed and to appropriate that amount to the VSC. R.C. 5901.11; R.C. 5705.38-.41; *see also* 2008 Op. Att’y Gen. No. 2008-033, at 2-340 to 2-341.

A Member of a Board of Park Commissioners of a Park District Formed Pursuant to R.C. Chapter 1545 May Not Simultaneously Hold the Position of Member of a Board of Health of a Combined General Health District

A review of the powers, duties, and responsibilities of the positions of member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a board of health of a combined general health district discloses an impermissible conflict of interest between the positions. The conflict of

interest occurs because of competition over tax money generated within the ten-mill limitation. As explained below, a park district and general health district, as well as other taxing units in the county levying taxes upon real property, must share in the amount of inside millage available. Consequently, the amount of inside millage available to a park district is contingent upon the amount of inside millage sought by a general health district and other overlapping taxing units. *See, e.g.*, 2010 Op. Att’y Gen. No. 2010-031, at 2-227.

Both a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and a board of health of a combined general health district are required by statute to prepare, adopt, and submit an annual tax budget to the county budget commission. R.C. 3709.28; R.C. 5705.01(H); R.C. 5705.28-32. After the annual tax budgets are submitted, the county budget commission revises and adjusts the estimates of balances and receipts from all sources for each fund within the tax budgets. R.C. 5705.31; R.C. 5705.32. If necessary, the county budget commission adjusts the tax levies of various governmental entities, including park districts and general health districts. *Id.*

Because a park district and a combined general health district may be in competition for tax moneys within the ten-mill limitation, an individual who serves on both the board of park commissioners and the board of health of a combined general health district may have conflicting duties and loyalties that prevent him from making completely objective, disinterested decisions when preparing the competing tax budgets. Prior Attorney General opinions consistently have concluded that a conflict of interest occurs if a person is required to take a position on behalf of one entity to the potential detriment of the other, including the competition for tax moneys within the ten-mill limit and the preparation of tax budgets for two different governmental entities. *See, e.g.*, 2008 Op. Att’y Gen. No. 2008-024, at 2-255 to 2-256; 2008 Op. Att’y Gen. No. 2008-022, at 2-237 to 2-239; 1992 Op. Att’y Gen. No. 92-053, at 2-216 to 2-218; 1990 Op. Att’y Gen. No. 90-083, at 2-355 to 2-356. As explained by prior opinions, “in the preparation of the annual tax budget it may well occur that any proposed modifications or reductions with respect to one subdivision’s budget could be detrimental to another subdivision’s budget, ‘and where the same person participates in the preparation of two such budgets there may be a conscious or unconscious bias or prejudice on his part.’” 2004 Op. Att’y Gen. No. 2004-025, at 2-237 (quoting 1958 Op. Att’y Gen. No. 1962, p. 215, at 217-18). *See also* 1999 Op. Att’y Gen. No. 99-027, at 2-182 (“[a]n argument that the county or city is entitled to a certain level of funds means a reduced level of funds are available for the other’s use. Accordingly, the competition for advantageous budget decisions could subject a person who holds [two public positions] to influences that may prevent him from making completely objective decisions’”); 1990 Op. Att’y Gen. No. 90-083, at 2-355 (“[a]n individual who serves simultaneously as a member of two taxing authorities, which compete for the same funds, ‘would be faced with a conflict of interest while preparing the budget of each subdivision, since in both positions he would be attempting to obtain the greatest possible share of the available funds, at the expense of the other subdivisions’” (quoting 1981 Op. Att’y Gen. No. 81-010, at 2-33)).

A review of the immediacy of the conflict of interest arising from the competition for tax moneys generated within the ten-mill limitation indicates that the conflict cannot be sufficiently avoided or eliminated entirely. Significantly, the conflict relates to financial and budgetary matters. Members of both a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and of a board of health of a combined general health district are statutorily required to prepare budgets, making it a primary function of each position. Additionally, the conflict over competition for funds and possible budget decisions could arise each year, as the budgets and their funding are matters which both a park district and a combined general health district must consider on an annual basis. Because preparing the budget is a primary function of each position and occurs on a regular basis, a person who serves simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a board of health of a combined general health district is unable to remove himself from the conflict of interest in either position. Finally, the handling of budgetary matters requires independent decision-making authority in each position. Accordingly, a person who serves simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and as a member of a board of health of a combined general health district within the same county is unable to eliminate entirely or avoid sufficiently the conflict of interest resulting from competition for tax moneys generated within the ten-mill limitation. *See, e.g.*, 2008 Op. Att’y Gen. No. 2008-024, at 2-257 to 2-258; 2008 Op. Att’y Gen. No. 2008-022, at 2-239; 1992 Op. Att’y Gen. No. 92-053, at 2-217 to 2-218. The person, therefore, is subject to an impermissible conflict of interest that bars him from serving concurrently in these two positions.

A Member of a Board of Park Commissioners of a Park District Formed Pursuant to R.C. Chapter 1545 or a Member of a Board of Health of a Combined General Health District May Not Simultaneously Hold the Position of Member of a VSC

A review of the powers, duties, and responsibilities of the positions of member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545, member of a board of health of a combined general health district, and member of a VSC discloses an impermissible conflict of interest between the positions of member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a VSC and the positions of member of a board of health of a combined general health district and member of a VSC. A park district and a combined general health district each compete with a VSC for tax moneys within the ten-mill limitation.

As previously explained, both a park district and a combined general health district must submit an annual tax budget to the county budget commission. R.C. 3709.28; R.C. 5705.01(H); R.C. 5705.28-.32. Both entities share in the amount of inside millage available within the county. *See* R.C. 3709.28; R.C. 5705.28-.32. Likewise, a VSC receives funding from the county’s general levy for current operating expenses within the ten-mill limitation. R.C. 5901.11; R.C. 5705.05; *see also* R.C. 5705.04(A).

Accordingly, a member of a VSC who serves as either a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 or member of a board of health of a combined general health district may have conflicting duties and loyalties that prevent him from making completely objective, disinterested decisions when preparing the competing tax budgets. An individual holding these positions is, therefore, faced with an impermissible conflict of interest. *See, e.g.*, 2008 Op. Att’y Gen. No. 2008-024, at 2-255 to 2-256; 2008 Op. Att’y Gen. No. 2008-022 at 2-237 to 2-239.

A review of the immediacy of the conflict of interest arising from the competition for tax moneys generated within the ten-mill limitation indicates that the conflict cannot be sufficiently avoided or eliminated entirely. Again, the conflict relates to financial and budgetary matters. Additionally, preparing an annual budget is a primary function of each of the positions, and the conflict could arise each year as the budgets are prepared annually for each of the three entities. It also is impractical for a person serving in any of these positions to remove himself from the conflict because preparing the budget is a primary function of each position that occurs on a regular basis. Finally, preparation of the budgets of each entity requires independent decision-making authority in each of the positions.

A member of a VSC who serves simultaneously as either a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 or a board of health of a combined general health district within the same county, therefore, is unable to eliminate entirely or avoid sufficiently the conflict of interest resulting from competition for tax moneys generated within the ten-mill limitation. Accordingly, a person is subject to an impermissible conflict of interest that bars him from serving simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and a member of a VSC or as a member of a board of health of a combined general health district and a member of a VSC. *See, e.g.*, 2008 Op. Att’y Gen. No. 2008-024, at 2-257 to 2-258; 2008 Op. Att’y Gen. No. 2008-022, at 2-239; 1992 Op. Att’y Gen. No. 92-053, at 2-217 to 2-218.

A Person May Not Serve Simultaneously as a Member of a Board of Park Commissioners of a Park District Formed Pursuant to R.C. Chapter 1545, a Member of a Board of Health of a Combined General Health District, and a Member of a VSC

Because impermissible conflicts of interest occur when a person serves simultaneously in the positions of member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545, member of a board of health of a combined general health district formed pursuant to R.C. 3709.07, and member of a VSC within the same county, it follows that a person may not hold all three of these positions at the same time. As explained above, the conflict occurs because of the competition between these three governmental entities for tax moneys within the ten-mill limitation. Because the conflict cannot be sufficiently avoided or eliminated entirely, an individual may not serve simultaneously in these three positions.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a board of health of a combined general health district within the same county.
2. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545 and member of a veterans service commission within the same county.
3. A person may not serve simultaneously as a member of a board of health of a combined general health district and member of a veterans service commission within the same county.
4. A person may not serve simultaneously as a member of a board of park commissioners of a park district formed pursuant to R.C. Chapter 1545, member of a board of health of a combined general health district, and member of a veterans service commission within the same county.