

OPINION NO. 94-047

Syllabus:

An individual who serves as part-time health commissioner of two different counties may not serve in both such capacities on a joint district solid waste management policy committee. Instead, to avoid a conflict of interests, the

individual must name a designee to serve as a member of the policy committee in one of those capacities.

To: Richard G. Ward, Ross County Prosecuting Attorney, Chillicothe, Ohio
By: Lee Fisher, Attorney General, August 5, 1994

You have requested an opinion regarding the powers and duties of an individual who, by statute, is designated as a member of a solid waste management policy committee in two different capacities. The situation with which you are concerned involves a joint solid waste management district established under R.C. Chapter 343 by Pickaway, Highland, Fayette, and Ross Counties. See R.C. 343.01(A)(2).

Creation of a Joint District Solid Waste Management Policy Committee

The board of directors of a joint solid waste management district, *see* R.C. 343.01(B), is required to "establish and convene a solid waste management policy committee to prepare the solid waste management plan of the district." R.C. 3734.54(B). By statute, the policy committee must include certain designated officials of each county within the district: the president of the board of county commissioners or his designee, the chief executive officer of the municipal corporation with the largest population or his designee, a township representative chosen by a majority of the boards of township trustees within the county, and the health commissioner of the health district with the largest territorial jurisdiction in the county or his designee. The policy committee must also include "one member representing industrial, commercial, or institutional generators of solid waste from each county within the joint district, one member representing the general interests of citizens from each county within the joint district, and one member representing the public from each county within the joint district." R.C. 3734.54(C). The members representing generators, the members representing the general interests of citizens, and the members representing the public are appointed by the county, municipal, township, and health district representatives of each county. If there is an even number of counties in the joint district, the committee includes an additional public member who is appointed by all the other members.

Health Commissioner as a Member of a Joint District Solid Waste Management Policy Committee

Your question relates to an individual who holds the part-time position of health commissioner in both Pickaway and Ross Counties. Because he holds both positions, that individual is designated to serve as a member of the joint district solid waste management policy committee in both capacities. You have asked whether the individual "counts as two board members for purposes of determination of a quorum and voting."

Duties of a Joint District Solid Waste Management Policy Committee

The principal duty of a joint district solid waste management policy committee is to prepare a solid waste management plan for the district. R.C. 3734.54(B). That plan must "provide for, demonstrate, and certify the availability of and access to sufficient solid waste management facility capacity to meet the solid waste management needs of the district" for a period of at least ten years. R.C. 3734.53(A). The plan must contain an inventory of sources and quantities of wastes, existing facilities, and collection systems; a projection of population changes and waste disposal needs; a strategy for identifying sites for additional solid waste management facilities; cost analyses; a schedule for implementing the plan that provides for

expanding, establishing, and closing facilities as appropriate and sets forth methods for financing the plan; and a program for providing informational or technical assistance. R.C. 3734.53(A). The plan must also address the matter of fees and the allocation of certain moneys that are available to the district. R.C. 3734.53(B). The purposes for which such moneys may be allocated are specified by statute and include providing financial assistance to boards of health for enforcing statutes, rules, orders, and terms of permits, licenses or variances, and training their employees; providing financial assistance to counties, municipal corporations, or townships to defray costs of maintaining roads and other public facilities and providing emergency and other public services resulting from the location and operation of certain facilities within their boundaries; and paying costs incurred by boards of health for collecting and analyzing samples from water wells on lands adjacent to solid waste facilities pursuant to contracts entered into with the boards of health. R.C. 3734.57(G).

Conflict of Interests

The fact that the General Assembly has so precisely delineated the number of members of a joint district solid waste management policy committee and the interests that they represent indicates that the General Assembly intended that a specific number and type of different interests be represented on the policy committee. It is apparent that each member may view matters at issue from a different perspective, depending upon the interests of the persons or entity he represents. It may be that health commissioners from various counties will share some interests and take the same position on some matters considered by the policy committee. It is clear, however, that there will be matters on which the interests of different health districts may vary -- as, for example, the matter of providing financial assistance to the various health districts pursuant to R.C. 3734.57(G).

In light of the fact that each health district will have different interests to be represented on a joint district solid waste management policy committee, a single individual who represents two such districts will face a conflict of interests or be placed in a position of divided loyalties and will be unable to fairly represent both districts. *See, e.g.*, 1985 Op. Att'y Gen. No. 85-042 at 2-150 ("[o]ne person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public"); 1985 Op. Att'y Gen. No. 85-006; 1980 Op. Att'y Gen. No. 80-035 at 2-149 ("[a]n individual who serves in dual public positions faces a situation which poses a conflict of interests when his responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to influences which may prevent his decisions from being completely objective"). Under common law principles, individuals are generally prohibited from serving in two positions that represent conflicting interests. *See, e.g., State ex rel. Hover v. Wolven*, 175 Ohio St. 114, 191 N.E.2d 723 (1963); 1988 Op. Att'y Gen. No. 88-033; 1986 Op. Att'y Gen. No. 86-060; Op. No. 80-035.

Naming a Designee

It is true that R.C. 3734.54 designates the health commissioner of the health district having the largest territorial jurisdiction within each county as a member of a joint district solid waste management policy committee, and it might be argued that an individual who serves in two such capacities is entitled to serve on the policy committee in both such capacities. *See, e.g.*, 1994 Op. Att'y Gen. No. 94-013 at 2-57 n.1. As discussed above, however, such an individual will face a clear conflict of interests. The General Assembly has provided for this possibility by expressly permitting a health commissioner who is designated as a member of a joint district solid waste management committee to name a designee to represent the interests of

the health district. R.C. 3734.54(B)(4). Accordingly, an individual who is faced with the conflict of representing the interests of two different health districts on a joint district solid waste management policy committee may designate an appropriate person to serve in his stead in one of those capacities. *See generally, e.g.*, 1986 Op. Att'y Gen. No. 86-030. When such designation is made, each health district will be represented by a separate voting representative. *See, e.g.*, 1977 Op. Att'y Gen. No. 77-064 at 2-236 (when a statute authorizes a public official to name a designee to serve in his stead as a member of a commission, there is a presumption that the designee "is capable of exercising the judgment or discretion required to perform the duties of a member").¹

Conclusion

For the reasons discussed above, it is my opinion, and you are advised, that an individual who serves as part-time health commissioner of two different counties may not serve in both such capacities on a joint district solid waste management policy committee. Instead, to avoid a conflict of interests, the individual must name a designee to serve as a member of the policy committee in one of those capacities.

¹ You have not asked whether a single individual may serve as part-time health commissioner of two different counties. Accordingly, this opinion does not consider that question except to conclude that any conflict of interests that would otherwise result from serving in both capacities on a joint district solid waste management policy committee can be eliminated by the appointment of a designee to serve in one such capacity. *See, e.g., Esler v. Summit County*, 39 Ohio Misc. 2d 8, 530 N.E.2d 973 (C.P. Summit County 1985); 1979 Op. Att'y Gen. No. 79-111.