

**OPINION NO. 90-021****Syllabus:**

A registered nurse employed by a municipal hospital may not simultaneously serve as a member of the board of governors of that hospital.

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**To: Keith A. Shearer, Wayne County Prosecuting Attorney, Wooster, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, April 11, 1990**

I have before me your request for my opinion as to whether the positions of member of the board of governors of a municipal hospital and registered nurse in the same hospital are compatible. Information provided indicates that the city of Wooster and the Chester, Clinton, East Union, Franklin, Wayne, Wooster Joint Township Hospital District have entered into an agreement, pursuant to R.C. 513.08, to operate a municipal hospital, to wit, the Wooster Community Hospital.

Pursuant to the agreement, management and control of the hospital is vested in the board of governors. *See* R.C. 749.15 (management and control of a municipal hospital is vested in the director of public safety); R.C. 749.18 (where an agreement includes participation of a joint township hospital district in the maintenance and operation of a municipal hospital, the municipal corporation may establish a board of governors to exercise, subject to such further limitations as are imposed by the agreement, the powers vested under R.C. 749.15 in the director of public safety); *see also* 1951 Op. Att'y Gen. No. 341, p. 139 at 145 (a board of governors which is given authority to manage a municipal hospital is endowed with all the powers of the director of public safety). In discharging its duties, the board of governors of a municipal hospital shall be empowered to establish rules for the government of, and the admission of persons to, the hospital; employ a superintendent, physicians, nurses, and such other employees as are necessary; and fix the compensation of all such persons. *See* R.C. 749.15. Additionally, the board of governors may grant to its employees certain benefits which it determines to be customary and usual in the nonprofit hospital field in its community, provide scholarships, tuition reimbursement and other staff development programs, pay reasonable expenses for recruiting physicians into the city if all or part of the city has been designated as an area with a shortage of personal health services, and employ counsel and institute legal action for the collection of delinquent accounts. *See* R.C. 749.15.

A registered nurse, the other position about which you ask, is employed by hospitals to perform various duties related to the provision of health care services. The duties of a registered nurse generally include the administration of medications and treatments prescribed by licensed physicians, and the observation and recording of patient's symptoms and reactions. See generally R.C. 4723.02(B) (setting forth a definition for "practice of nursing as a registered nurse"); *Richardson v. Doe*, 176 Ohio St. 370, 373, 199 N.E.2d 878, 880 (1964) (a nurse's "primary function is to observe and record the symptoms and reactions of patients" and report them to the physician).

In 1979 Op. Att'y Gen. No. 79-111, my predecessor set forth a seven part test for determining the compatibility of two public positions. Such positions are incompatible if, *inter alia*, one position is subordinate to, or in any way a check upon, the other. *State ex rel. Attorney General v. Gebert*, 12 Ohio C.C. (n.s.) 274, 275, 21 Ohio C.C. Dec. 355, 356 (Cir. Ct. Franklin County 1909); *Pistole v. Wiltshire*, 22 Ohio Op. 2d 464, 465, 189 N.E.2d 654, 656 (C.P. Scioto County 1961); Op. No. 79-111. Further, past opinions of the Attorney General have stated that "[t]here can be a no stronger case of subordination, and, therefore, incompatibility, than a direct employer-employee relationship." 1979 Op. Att'y Gen. No. 79-099 at 2-308; accord 1969 Op. Att'y Gen. No. 69-056; 1966 Op. Att'y Gen. No. 66-072; 1958 Op. Att'y Gen. No. 2609, p. 519; 1958 Op. Att'y Gen. No. 1742, p. 93; 1927 Op. Att'y Gen. No. 1288, vol. III, p. 2325; see also 1989 Op. Att'y Gen. No. 89-069.

With respect to your specific inquiry, I note that in 1958 Op. No. 1742, in an analogous situation, one of my predecessors concluded that the positions of member of a board of trustees of a county hospital and employee in that hospital are incompatible since R.C. 339.06 authorizes the board to exercise control over the employees of the hospital. The opinion provides, in relevant part:

The control the board may exercise over employees of the hospital makes it readily apparent that there is subordination of one to the other. There can be no doubt that the power to remove is a complete check of one upon the other. It seems quite certain that a person may not act both as employer and employee and retain compatibility.

1958 Op. No. 1742 at 94; see Op. No. 69-056 (syllabus, paragraph two) ("[i]t is incompatible for a physician to serve simultaneously as chief of staff and on the board of county hospital trustees").

I reach a similar conclusion with respect to the positions of member of the board of governors of a municipal hospital and registered nurse in the same hospital. R.C. 749.15 is similar to R.C. 339.06 in that the former statute authorizes the board of governors of a municipal hospital to exercise control over the employees of such hospital. Consequently, the position of registered nurse is subordinate to, and, thus, incompatible with the position of member of the board of governors of a municipal hospital, where both positions are with the same hospital.

Therefore, it is my opinion, and you are hereby advised that a registered nurse employed by a municipal hospital may not simultaneously serve as a member of the board of governors of that hospital.