

**OPINION NO. 85-100****Syllabus:**

1. A county engineer who accepts employment as a teacher of engineering or surveying is not engaging in the private practice of engineering or surveying for purposes of R.C. 325.14..
2. A county engineer may be employed as a teacher at a technical college, provided that the teaching obligations do not conflict with the time required to carry out the duties of the county engineer.

---

**To: William L. Thomas, Belmont County Prosecuting Attorney, St. Clairsville,  
Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1985**

I have before me your request for my opinion regarding interpretation of the "private practice of engineering or

surveying" for purposes of R.C. 325.14. Your questions are as follows:

1. If a county engineer accepts employment as a teacher of engineering or surveying, does such employment constitute the "private practice of engineering or surveying" within the purview of R.C. 325.14?
2. Is it a conflict of interest for a county engineer to also be employed by a technical college which is under the Ohio State Board of Regents?

In order to answer your questions it is necessary to analyze R.C. 325.14, which establishes the salary of a county engineer. R.C. 325.14 states, in part, that "[a] county engineer may elect to engage or not to engage in the private practice of engineering or surveying...." If a county engineer chooses to engage in the private practice of engineering or surveying, he shall receive a lower salary than a county engineer who has chosen not to so engage. R.C. 325.14(B).

You have informed me that the Belmont County engineer has chosen not to engage in the private practice of engineering or surveying, and therefore receives a higher salary than he would have received had he chosen to engage in such private practice. At the same time, however, the county engineer has inquired as to whether he would be permitted to teach a class at Belmont Technical College, an institution established under the Ohio Board of Regents pursuant to R.C. Chapter 3357. See R.C. 3357.02; R.C. 3357.07. It must be determined, therefore, whether a county engineer's employment as a teacher at a technical college constitutes the "private practice of engineering or surveying" within the purview of R.C. 325.14.

I note, first, that R.C. 315.02 provides that no person is eligible to serve as county engineer "unless he is a registered professional engineer and a registered surveyor, licensed to practice in this state." R.C. Chapter 4733 governs the registration of professional engineers and surveyors. R.C. 4733.02 and R.C. 4733.22 provide that no person shall practice or offer to practice the professions of engineering or surveying unless he has been registered or exempted under R.C. Chapter 4733. See, e.g., R.C. 4733.14; R.C. 4733.18; 1981 Op. Att'y Gen. No. 81-080.

The practice of engineering is defined in R.C. 4733.01(B), for purposes of R.C. 4733.01-.23, as follows:

"The practice of engineering" includes any professional service, such as consultation, investigation, evaluation, planning, design, or inspection of construction or operation, for the purpose of assuring compliance with drawings or specifications in connection with any public or privately owned public utilities, structures, buildings, machines, equipment, processes, works, or projects in the proper rendering of which the qualifications of section 4733.11 of the Revised Code are required to protect the public welfare or to safeguard life, health, or property. (Emphasis added.)

According to this definition, the practice of engineering

includes professional services of the sort listed (*i.e.*, "consultation, investigation, evaluation, planning, design, or inspection of construction or operation"), to assure compliance with drawings or specifications in connection with certain types of undertakings (*i.e.*, "public or privately owned public utilities, structures, buildings, machines, equipment, processes, works, or projects") for which, in order to protect the public welfare or to safeguard life, health, or property, it is necessary that an individual have the qualifications set forth in R.C. 4733.11 as requirements for registration as a professional engineer. The underlying reason for requiring the registration of professional engineers is to regulate engineering which concerns the safeguarding of life, public health, or property. See Ohio Society of Professional Engineers v. Hulslander, 86 Ohio App. 497, 89 N.E.2d 119 (Cuyahoga County 1949); Fanning v. College of Steubenville, 31 Ohio Op. 2d 495, 197 N.E.2d 422 (C.P. Jefferson County 1961), appeal dismissed, 174 Ohio St. 343, 189 N.E.2d 72 (1963).

The definition appearing in R.C. 4733.01(B) sets forth certain types of professional services which are included within the practice of engineering. "Consultation, investigation, evaluation, planning, design, [and] inspection of construction or operation" are specifically named. Teaching is not. The General Assembly's use of the words "such as" indicates that other similar types of services may also be included within the definition of the practice of engineering. See The Random House Dictionary of the English Language 1420 (unabridged ed. 1973) (defining "such as" to mean "of the kind specified...for example"). See generally State v. Aspell, 10 Ohio St. 2d 1, 4, 225 N.E.2d 226, 228 (1967) (under the legal maxim *eiusdem generis*, which means "of the same kind or species," where a statute uses terms which are confined to a particular class of objects and then a term which may have a broader meaning, the latter term is "to be considered as embracing only things of a similar character as those comprehended by the preceding limited and confined terms" (citations omitted)); Myers v. Seaberger, 45 Ohio St. 232, 236, 12 N.E. 796, 798 (1887) ("it is a settled rule of construction that, in accordance with the maxim *noscitur a sociis*, the meaning of a word may be ascertained by the meaning of words associated with it; and again, according to a similar rule, the coupling of words together shows that they are to be understood in the same sense" (citation omitted)). It does not appear, however, that teaching a class in engineering or surveying would fall within the type of professional services which are included within the practice of engineering.

The professional services which are listed in R.C. 4733.01(B) as constituting the practice of engineering relate directly to the execution of the types of undertakings named therein. The focus of R.C. 4733.01(B) is upon the compliance with such standards as are necessary to protect the public welfare or to safeguard life, health, or property. It appears that the act of teaching, though it may in the long term aid others in carrying out the practice of engineering, does not, in itself, constitute a professional service of the sort comprehended by R.C. 4733.01(B). To "teach" means "[t]o impart knowledge by means of lessons; to give instruction in...." Black's Law Dictionary 1311 (5th ed. 1979). Teaching does not, in itself, assure the compliance of a particular undertaking with drawings or specifications, nor does it protect the public welfare or safeguard life, health, or property. Further, teaching does not involve responsibility for any aspect of the execution of a particular project. The distinction between

teaching and rendering professional services was recognized by the General Assembly in R.C. 4732.01(B), which states, in part: "For purposes of this chapter, teaching or research shall not be regarded as the practice of psychology, even when dealing with psychological subject matter, provided it does not otherwise involve the professional practice of psychology in which patient or client welfare is directly affected." (Emphasis added.) See generally 1983 Op. Att'y Gen. No. 83-013 (discussing the nature of medical, psychiatric, or psychological services). I believe that a similar distinction between teaching and the provision of professional services in connection with a particular undertaking is implicit in R.C. 4733.01(B). I conclude, therefore, that teaching at a technical college does not constitute the practice of engineering, as that term is defined in R.C. 4733.01(B).

The practice of surveying is defined in R.C. 4733.01(D), for purposes of R.C. 4733.01-.23, as follows:

(D) "Practice of surveying" means that branch of engineering which includes any professional service which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for the adequate performance of the art of surveying, including but not limited to, measuring the area of any portion of the earth's surface, the lengths and directions of the bounding lines, and the contour of the surface, for their correct determination and description and for conveyancing for recording, or for the establishment or re-establishment of land boundaries and the platting of lands and subdivisions; and like measurements and operations involved in the surveying of mines, commonly known as "mine surveying." (Emphasis added.)

Pursuant to this definition, the practice of surveying is a branch of engineering which includes any professional service that requires special knowledge for the performance of surveying. See generally R.C. 4733.11; 1972 Op. Att'y Gen. No. 72-108. Like the practice of engineering, the practice of surveying consists of the performance of professional services which involve the application of knowledge to particular projects. As a branch of engineering, the practice of surveying is related to activities which affect health and safety. See R.C. 4733.13(C) ("[t]he examinations for surveying shall test the applicant's knowledge and ability to perform surveying services which affect the safety of life, health, and property"). The definition appearing in R.C. 4733.01(D) does not, by its terms, include teaching as a professional service which constitutes the practice of surveying, and I do not believe that its language may be expanded to encompass that activity. See generally, e.g., Bernardini v. Board of Education, 58 Ohio St. 2d 1, 387 N.E.2d 1222 (1979).

I conclude, therefore, in response to your first question, that teaching a class in engineering or surveying is not a professional service that is included within the private practice of engineering or the private practice of surveying, as those terms are defined in R.C. 4733.01. As a result, a county engineer who accepts employment as a teacher of engineering or surveying is not engaging in the private practice of engineering or surveying for purposes of R.C. 325.14.

You have also asked whether a conflict of interest arises when a county engineer is employed as a teacher at a technical college established under R.C. Chapter 3357. It is my understanding that your question is whether there is any reason why an individual may not hold both positions. This question involves an analysis of the compatibility of the two positions. See generally 1956 Op. Att'y Gen. No. 6776, p. 494. In 1979 Op. Att'y Gen. No. 79-111, at 2-367 through 2-368, my predecessor set forth seven basic questions which must be answered to determine if two positions are compatible with one another. The questions are 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 turn now to a consideration of the questions set forth above. Questions number six and seven are of primarily local concern. I am aware of no federal or state regulation which would affect the capacity of a county engineer to teach at a technical college, and I assume, for the purposes of this opinion, that there are no local departmental regulations, charter provisions, or ordinances which limit the holding of outside employment by a county engineer or teacher at a technical college. See generally Op. No. 79-111.

Question number two asks if the empowering statutes of either position limit the outside employment permissible. As I have already stated, R.C. 325.14 does limit the outside employment of county engineers who have chosen not to engage in the private practice of engineering or surveying. The answer to your first question, however, indicates that teaching a class in engineering or surveying is not within the "practice of engineering or surveying," for purposes of R.C. 325.14. Therefore, a county engineer may teach a class in engineering or surveying without being involved in the private practice of engineering or surveying. R.C. 315.02 also limits the other positions which may be held by the county engineer, by providing that "[n]o person holding the office of clerk of the court of common pleas, sheriff, county treasurer, or county recorder is eligible to hold the office of county engineer." These restrictions are, however, not relevant to the situation with which you are concerned. I am aware of no limitations as to other employment which are imposed by statute upon a teacher at a technical college.

The third question set forth above is based upon the common law test of incompatibility. The common law test asks whether

one office is subordinate to or a check upon the other, and whether it is physically possible for one person to hold both 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 answer the question whether the office of county engineer or the position of a part-time teacher at a technical college<sup>1</sup> is subordinate to or a check upon the other, it is necessary to examine the powers and duties of both positions.

R.C. 315.08 sets forth certain general duties of the county engineer. It states, in part:

The county engineer shall perform for the county all duties authorized or declared by law to be done by a registered professional engineer or registered surveyor. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, except buildings, constructed under the authority of any board within and for the county.

Other duties of the county engineer are defined elsewhere in R.C. Chapter 315. See, e.g., R.C. 315.13 (making emergency repairs on roads, bridges, and culverts in the county); R.C. 315.14 (inspecting public improvements made under authority of the board of county commissioners); R.C. 315.25 (keeping records of surveys); R.C. 315.27 (making indexes to records in his office). Pursuant to R.C. 5543.01, the county engineer also has general charge of the construction, reconstruction, improvement, maintenance, and repair of bridges and highways under the jurisdiction of the board of county commissioners, and of the construction, reconstruction, resurfacing, and improvement of roads by boards of township trustees or by road districts. Related duties of the county engineer appear in the various provisions of R.C. Chapter 5543. See, e.g., R.C. 5543.02 (preparing estimates of funds required for the activities set forth in R.C. 5543.01); R.C. 5543.04 (naming, numbering, and mapping roads in the county); R.C. 5543.10 (constructing sidewalks); R.C. 5543.20 (inspecting bridges). Thus, the county engineer has certain responsibilities for the lands and public improvements of the county and for roads and bridges throughout the county.

In contrast, a teacher at a technical college has no connection with a county, as such. Rather, such a teacher is appointed by the board of trustees of a technical college district. See R.C. 3357.09(D). A technical college district is a distinct political subdivision of the state. See R.C. 3357.01(B); R.C. 3357.04. See generally 1981 Op. Att'y Gen. No. 81-062. Members of the board of trustees of a technical college district are appointed by the Governor or by a caucus of presidents of the county, city, and exempted village boards of education of school districts whose territories are within the technical college district. R.C. 3357.05. A teacher who is employed at a technical college has such duties as are imposed upon him by contract. The sample contract which you have provided indicates that, in the situation here under

---

<sup>1</sup> You have informed me that the teaching position would involve classes one evening a week, thus making it a part-time position.

consideration, the duties would involve teaching a class in engineering drawing one evening a week.

It is apparent from an examination of the duties of a county engineer and a teacher employed by a technical college that neither is a check upon, or subordinate to, the other. The county engineer is elected, pursuant to R.C. 315.01, and therefore is responsible to the voters of the county, while a teacher at a technical college is hired by, and answers to, the board of trustees of the technical college district. R.C. 3357.09(D); R.C. 3357.18. The duties of each position are independent of one another, and neither position is responsible for assigning duties to, or supervising, the other. I conclude, therefore, that one position is not subordinate to, or a check upon, the other. See generally 1980 Op. Att'y Gen. No. 80-035 (concluding that the positions of township trustee and trustee of a technical college district are not subordinate to, or checks upon, one another); 1972 Op. Att'y Gen. No. 72-066 (considering a community college created under R.C. Chapter 3354, which is in many respect similar to a technical college created under R.C. Chapter 3357, and concluding that the position of teacher in a community college is compatible with that of county commissioner of a county within the community college district, even though the commissioners appoint some of the trustees of the district).

Compatibility issues do not, however, involve only an examination of whether one position directly or indirectly, controls the other. It is also necessary to determine whether a person serving in two different public capacities is subject to a conflict of interest between the two positions. The fifth question set forth above raises this concern. "An 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." Op. No. 80-035 at 2-149 (citations omitted).

After examining the duties and responsibilities of a county engineer and a teacher at a technical college, I have found that the functions of the positions are performed independently of one another. The office of county engineer involves engineering and surveying activities and related duties to carry out the functions of R.C. Chapters 315 and 5543, while a teacher at a technical college is responsible for teaching those classes assigned to him. The duties of the county engineer relate to public improvements constructed within and for the county and to road and bridge improvements made by the county or by a township or road district; the county engineer has no responsibility for any improvements made by a technical college district. See, e.g., R.C. 315.08; R.C. 315.14; R.C. 3357.09; R.C. 3357.12; R.C. 3357.16; R.C. 5543.01. It is possible that, in carrying out his duties, the county engineer may take action with respect to certain projects--as, for example, emergency repairs for roads under R.C. 315.13--which may, as a practical matter, affect the operations of a technical college which is located within the county. I do not, however, find that any such indirect relationship between the county engineer's duties and the technical college would prevent his employment by the college as part of the teaching staff, particularly since his underlying responsibility as county engineer is to make technical decisions concerning the safety of particular projects. See R.C. 4733.01(B), (D). See generally Op. No. 80-035 (concluding that, even though some

involvement between a board of township trustees and the board of trustees of a technical college district may be possible, positions on the two boards are compatible). I note that R.C. 3357.17 provides that the board of trustees of a technical college district, and its agents, shall cooperate with various public agencies representing the people of the district, in providing educational, social, civic, and recreational activities upon property of the board. It does not, however, appear that any such cooperation would cause a conflict respecting the positions here under consideration. I, therefore, conclude that a person who serves as both county engineer and teacher at a technical college is not subject to a conflict of interest. See generally Op. No. 80-035.

The first of the compatibility questions listed above concerns R.C. 124.57, which prohibits certain political activity by members of the classified service of the state or of a county, city, city school district, or civil service township. The county engineer, as an elected official, is in the unclassified civil service and is, therefore, not subject to R.C. 124.57. See R.C. 124.11(A)(1) (the unclassified service includes "[a]ll officers elected by popular vote or persons appointed to fill vacancies in such offices"); R.C. 315.01 (the position of county engineer is an elective office). A teacher at a technical college is an employee of the technical college district, and is, therefore, not in the classified service of the state or of a county, city, city school district or civil service township. See R.C. 3357.09(D) (the board of trustees of a technical college district appoints the faculty and other necessary employees); Op. No. 81-062 at 2-255 ("because...technical college district employees are employees of the district, they are not state employees"). See also 1983 Op. Att'y Gen. No. 83-092. Thus, such a teacher is not subject to R.C. 124.57. It is, therefore, clear that R.C. 124.57 presents no obstacle to a person who seeks to hold the positions of county engineer and teacher at a technical college.

Finally, the fourth question set forth above asks whether it is physically possible for one person to discharge the duties of both positions. This is a question of fact, which is subject to final determination on a local level. You have, however, informed me that the teaching position in question would involve classes only one evening a week, and that the county engineer's job is ordinarily performed during the daytime hours. It appears, therefore, that it would be physically possible for one individual to perform the duties of both positions.

In conclusion, it is my opinion, and you are hereby advised, that:

1. A county engineer who accepts employment as a teacher of engineering or surveying is not engaging in the private practice of engineering or surveying for purposes of R.C. 325.14.
2. A county engineer may be employed as a teacher at a technical college, provided that the teaching obligations do not conflict with the time required to carry out the duties of the county engineer.