

## OPINION NO. 69-094

## Syllabus:

The positions of public health nurse of a city and health commissioner are incompatible offices and one individual may not legally hold both positions.

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To: John J. Malik, Jr., Belmont County Pros. Atty., St. Clairsville, Ohio  
By: Paul W. Brown, Attorney General, July 31, 1969

I have before me your request for my opinion as to whether the Public Health Nurse of a city can serve concurrently as Health Commissioner.

The duties of a health commissioner of a city or general health district are defined in Sections 3701.53 and 3709.11, Revised Code. These duties, when read with the duties of a health nurse as set out in Section 3709.15, Revised Code, come into conflict.

While the courts have hesitated to announce a comprehensive definition of incompatibility, there are certain well recognized principles that are derived from common law, which by the consensus of authority do render certain offices incompatible. The most significant test as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties.

The leading Ohio decision on the compatibility of public offices is State of Ohio ex rel. Attorney General v. Frank Gebert, 12 C.C. (N.S.) 274 (1909). The Court stated as follows at page 275:

"Offices are considered incompatible when one is subordinate to, or in any way a check upon, the other; or, when it is physically impossible for one person to discharge the duties of both."

The duties of a health commissioner clearly relate to the conservation and preservation of the health of the community. The duties of a public health nurse also clearly follow the same general requirements as do the duties of a health commissioner. In view of the Gebert case, supra, the two positions in question here are incompatible in that the position of public health nurse is subordinate to that of health commissioner in regard to important functions. The general duties of a health commissioner also involve checking upon the duties and performance of a health nurse. This clearly falls

within the purview of the Gebert opinion, supra, and, therefore, creates an incompatibility in the two positions.

This office ruled in Opinion No. 3747, Opinions of the Attorney General for 1954, that the office of coroner was not incompatible with employment as health commissioner. The two situations can be distinguished in light of the Gebert opinion, supra, because the office of coroner is an autonomous and independent office from that of health commissioner. The office of public health nurse, however, is subordinate to the health commissioner and the latter has a check upon the performance by the health nurse.

It is my opinion, therefore, and you are hereby advised that the positions of public health nurse of a city and health commissioner are incompatible offices and one individual may not legally hold both positions.