

**Note from the Attorney General's Office:**

1988 Op. Att'y Gen. No. 88-017 was questioned by  
2007 Op. Att'y Gen. No. 2007-037.

**OPINION NO. 88-017****Syllabus:**

1. So long as it is physically possible to do so, one person may simultaneously hold the positions of reclamation inspector for the Department of Natural Resources and county commissioner, except that where the county in which the person serves as commissioner has, pursuant to R.C. 307.11, entered into a lease or contract for the mining of coal on county land, the person may not perform the duties of reclamation inspector within that county.
2. The fact that a county has entered into a contract or lease for the mining of coal pursuant to R.C. 307.11 does not give a commissioner of that county a direct or indirect financial interest in a coal mining or reclamation operation, and a commissioner of that county is therefore not prohibited under R.C. 1513.04(D) from also serving as a reclamation inspector for the Department of Natural Resources.

---

**To: Joseph J. Sommer, Director, Ohio Department of Natural Resources,  
Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, March 30, 1988**

I have before me your request for my opinion regarding the compatibility of the positions of county commissioner and reclamation inspector for the Ohio Department of Natural Resources. You have indicated that the individual in question would not be performing inspection duties in the county in which she wishes to serve as a county commissioner.

In determining whether two positions are compatible, I must consider the following seven factors:

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?

1979 Op. Att'y Gen. No. 79-111 at 2-367 to 2-368.

Question number one of this analysis asks whether either position is a classified employment within the terms of R.C. 124.57. R.C. 124.57 prohibits any officer or employee in the classified service of the state, counties, cities, city school districts, and civil service townships from taking part in political activity other than voting or expressing his or her political opinions. R.C. 124.11 divides the civil service into the classified and unclassified service. The positions of county commissioner and reclamation inspector are unclassified. R.C. 124.11(A)(1); R.C. 124.11(A)(21).<sup>1</sup> Therefore, the prohibition contained in R.C. 124.57 does not apply.

Question number two asks whether the empowering statutes of either position limit outside employment. The empowering statute for a county commissioner is R.C. 305.01 which provides for the election of county commissioners. The empowering statute for a reclamation inspector is R.C. 1513.03 which provides that the chief of the division of reclamation of the Ohio Department of Natural Resources may designate certain employees as reclamation inspectors. Neither R.C. 305.01 nor R.C. 1513.03 expressly prohibits or limits a county commissioner or reclamation inspector from holding other employment.

I note that R.C. 1513.04(A) and (C) provide that certain employees of the state, including reclamation inspectors, shall not "[e]ngage in coal or surface mining operations as a sole proprietor or as a partner," nor shall they "[b]e employed as an attorney, agent, or in any other capacity by any person engaged in coal or surface mining operations." These provisions do not prohibit a reclamation inspector from serving as a county commissioner. Of more concern in this case is R.C. 1513.04(D), which specifically prohibits a reclamation inspector from having "a direct or indirect financial interest in any coal mining or reclamation operation." Under R.C. 307.11, if a board of county commissioners executes a lease or contract for the mining of coal, the rent or royalty from such lease or contract must be paid into the county treasury. Assuming the individual in question was serving on the board of county commissioners of a county with such a lease or contract, a question arises as to whether a county commissioner would thereby "have a direct or indirect financial interest" in a coal mining operation. While a county commissioner is officially interested in contracts which provide revenue for the county, that interest is not a "direct or indirect financial interest." Certainly, a county commissioner does not derive a direct or indirect personal financial benefit by virtue of such a contract. Cf. *Lawson & Covode v. Farmer's Bank of Salem*, 1 Ohio St. 206, 210 (1853) (stockholder of a company has an indirect financial interest in any suit in which the company is a party); Ohio Ethics Commission, Advisory Op. No. 87-003, p. 3 (trustees and officers of a nonprofit corporation have a fiduciary, but not necessarily pecuniary, interest in the contracts of the corporation). Therefore, because R.C. 1513.04(D) employs the word "financial" to modify the word "interest", I conclude that the prohibition of that section does not bar an individual from serving as a reclamation inspector and as a county commissioner even though the county is receiving money under a lease or contract for the mining of coal.

Question number three asks whether one position is subordinate to, or in any way a check upon, the other. A county commissioner, as an elected official, is responsible to the people who elected him. A reclamation inspector, on the other hand, is designated as such by the chief of the division of reclamation and "hold[s]

---

<sup>1</sup> The position of reclamation inspector was formerly classified. See Am. Sub. H.B. 238, 116th Gen. A. 1985 (eff. July 1, 1985). See also 1986 Op. Att'y Gen. No. 86-015 (person hired as reclamation inspector when position was classified retains classified status). But see *Lawrence v. Edwin Shaw Hospital*, 34 Ohio App. 3d 137, \_\_ N.E.2d \_\_ (Franklin County 1986). Pending legislation would again place the position of reclamation inspector in the classified service. S.B. 296, 117th Gen. A. 1987-88.

office at the pleasure of the chief" of the division of reclamation. R.C. 1513.03. Thus, a county commissioner and a reclamation inspector serve different masters and are not subordinate to each other. *See Pistole v. Wiltshire*, 189 N.E. 2d 654 (C.P. Scioto County 1961) (a township trustee is responsible to the people who elected him and a deputy sheriff is responsible to the sheriff who appointed him; neither position is subordinate to, or a check upon, the other). I therefore conclude that neither position is subordinate to, or in any way a check upon, the other.

Question number four asks whether it is physically possible for one person to discharge the duties of both positions. The working hours of each position must not be such that a person holding both positions would be called upon to perform the duties of both jobs at the same time. *See* 1981 Op. Att'y Gen. No. 81-010 (when meetings of the board of county commissioners are regularly held during school hours, the positions of county commissioner and full time school principal are incompatible). Ordinarily, the question of physical impossibility is a factual question to be determined at the local level, since such persons may more precisely determine the demands of each position. Op. No. 79-111. Therefore, I leave the final determination of this issue to the persons directly involved.

Question number five of the compatibility analysis asks whether there is a conflict of interest between the two positions. An answer to this question requires an examination of the powers and duties of the respective positions to see whether there is any material reason why an individual occupying both positions would be subject to conflicting interests or divided loyalties. Op. No. 79-111. *See also* 1985 Op. Att'y Gen. No. 85-042 at 2-150 ("One 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") (citations omitted).

The duties of a reclamation inspector are set forth in R.C. 1513.03 which provides:

The chief of the division of reclamation shall designate certain employees of the division as inspection officers of coal and surface mining operations for the purpose of enforcing the coal mining laws and the surface mining laws. Such inspection officers may enter upon and inspect any coal or surface mining operation at any time and upon entering the permit area the inspector shall notify the operator and shall furnish proper identification. After the final maps have been approved, the inspector shall notify the nearest mine office of the operator and advise of the inspection. They may serve and execute warrants and other processes of law issued in the enforcement of Chapters 1513. and 1514. of the Revised Code and rules adopted thereunder.

Such inspection officers, while in the normal, lawful, and peaceful pursuit of their duties, may enter upon, cross over, and remain upon privately owned lands for such purposes, and shall not be subject to arrest for trespass while so engaged or for such cause thereafter.

Such inspection officers shall hold office at the pleasure of the chief.

A board of county commissioners has numerous statutory powers and duties. *See, e.g.*, R.C. 307.01 (board shall provide offices for county officers); R.C. 307.15 (board may enter into contracts with legislative authorities of municipalities or boards of other counties); R.C. 5705.01(C) (board is the taxing authority for the county). I note that a conflict could arise if a reclamation inspector is assigned to or performing duties in the same county in which he is a county commissioner. *See* R.C. 307.11 (board of county commissioners may execute leases or contracts for the mining of coal and other minerals from land owned by the county); R.C. 1513.03 (reclamation inspector may inspect mines for purpose of enforcing coal and surface mining laws). However, you have stated that the individual in this case would not be performing her duties as a reclamation inspector in the county in which she seeks to be elected county commissioner. I therefore conclude that there is no conflict of interest which would bar one person from holding both positions under the conditions you describe.

The sixth and seventh questions of the compatibility analysis are of local concern and I assume, for purposes of this opinion, that there are no departmental regulations, charter provisions, or ordinances which limit the holding of outside employment by a county commissioner or reclamation inspector.

Therefore, it is my opinion, and you are advised, that:

1. So long as it is physically possible to do so, one person may simultaneously hold the positions of reclamation inspector for the Department of Natural Resources and county commissioner, except that where the county in which the person serves as commissioner has, pursuant to R.C. 307.11, entered into a lease or contract for the mining of coal on county land, the person may not perform the duties of reclamation inspector within that county.
2. The fact that a county has entered into a contract or lease for the mining of coal pursuant to R.C. 307.11 does not give a commissioner of that county a direct or indirect financial interest in a coal mining or reclamation operation, and a commissioner of that county is therefore not prohibited under R.C. 1513.04(D) from also serving as a reclamation inspector for the Department of Natural Resources.