

OPINION NO. 91-067**Syllabus:**

The position of county personnel officer is compatible with the position of court appointed volunteer of a juvenile court.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

You have requested an opinion whether the position of county personnel officer is compatible with that of court appointed volunteer of a juvenile court. 1979 Op. Att'y Gen. No. 79-111 sets forth seven questions for determining whether two public positions are compatible. The seven 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?

Questions six and seven are of local concern, and it is assumed, for purposes of this opinion, that there are no departmental regulations, charter provisions, or ordinances that would prohibit the simultaneous holding of the two positions in question. There are also no applicable federal or state regulations that pertain to these two positions.

Prohibition Against Partisan Political Activity

Under R.C. 124.57, classified employees and officers are prohibited from partaking in partisan political activity, other than to vote and espouse their political views. According to information you have provided, the position of county personnel officer is included within the county classified service, while that of court appointed volunteer is not within the classified service of any political subdivision. *See generally* R.C. 124.11(A)(10) (officers and employees of courts of record are in the unclassified civil service if "the director of administrative services finds it impracticable to determine their fitness by competitive examination"); R.C. 124.11(B) ("[t]he classified service shall comprise all persons ... not specifically included in the unclassified service"). Thus, an individual serving in the capacity of court appointed volunteer of a juvenile court is not subject to R.C. 124.57's prohibition. Further, court appointed volunteers are not elected in partisan elections, but, rather, are appointed by the juvenile court. *See* R.C. 2151.281(J)(1). Therefore, the prohibition of R.C. 124.57 does not prevent a county personnel officer from serving as a court appointed volunteer. *See generally* 1978 Op. Att'y Gen. No. 78-022 (syllabus) ("R.C. 124.57 does not prohibit a classified civil servant from being appointed to the office of township trustee pursuant to R.C. 503.24, or from seeking that office in a non-partisan election").

Outside Employment

The second issue is whether the positions of county personnel officer and court appointed volunteer are statutorily incompatible. Research discloses no statute that limits the outside employment of a county personnel officer. Court appointed volunteers are appointed by a juvenile court pursuant to R.C. 2151.281(J)(1). Neither this section nor another section of the Revised Code limits the outside employment of court appointed volunteers. Accordingly, the positions of county personnel officer and court appointed volunteer of a juvenile court are not statutorily incompatible.

Subordination Or Control

The third issue is whether one position is subordinate to, or in any way a check upon, the other. *See 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). According to information provided, the county personnel officer is under the control of the board of county commissioners and the county personnel administrator. A court appointed volunteer, however, is appointed, pursuant to R.C. 2151.281(J)(1), by a juvenile court, and therefore is responsible to the court that appoints him. The positions thus operate independently of each other, and neither is subordinate to the other. *See generally Pistole v. Wiltshire*, 22 Ohio Op. 2d 464, 467, 189 N.E.2d 654, 657-58 (C.P. Scioto County 1961) (where one position is responsible to the people who elected the officeholder and the other is responsible to another appointing authority, neither position is subordinate to, or a check upon, the other). Moreover, there are no situations in which one position serves as a check upon the other. In light of this, I find that the positions are not subordinate to, or in any way a check upon, each other.

Physical Constraints

The fourth issue is whether it is physically possible for one individual to perform the duties of both positions. Ordinarily, this is a factual question to be answered by the interested individuals because they may more precisely determine the demands of each position. *See generally* 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body I shall not attempt to make final determinations where issues of fact are involved"). Consequently, the final determination of this issue rests with the individuals directly involved.

Conflict Of Interest

The final issue is whether there may be a conflict of interest between the two positions. A resolution of this issue requires an examination of the powers and duties of the respective positions to determine whether there is any material reason why an individual occupying both positions would be subject to conflicting interests or divided loyalties. See 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").

Your letter describes the duties and responsibilities of the county personnel officer position as follows:

Placing advertisements in the newspaper for all county positions; accepting applications from all who fill them out; logging those applications to meet Affirmative Action and EEO criteria; as requested by Director for Human Services, passing those applications to the director for screening and interviewing at Human Services to make employment decision; processing all paper work for new employees to get person on payroll and get benefits rolling; Affirmative Action Monitor and reporting same each year to Columbus; special projects as assigned by personnel administrator and/or county commissioners; benefit specialist for life and health insurances. This employee has NO SAY IN EMPLOYMENT SELECTION.

A court appointed volunteer is a trained volunteer appointed by a juvenile court to protect the interests of a child in any proceeding concerning an alleged or an adjudicated delinquent child or unruly child, any proceeding concerning an alleged abused or neglected child, and any permanent custody proceeding held pursuant to R.C. 2151.414. See R.C. 2151.281. According to information included with your letter, a court appointed volunteer

provides a judge or referee with a carefully researched background of the child to help the court make a sound decision about the child's future. Each home placement case is as unique as the child involved. The [court appointed volunteer] must determine if it is in a child's best interest to stay with his or her parents or guardians, be placed in foster care, or be freed for permanent adoption. The [court appointed volunteer] makes a recommendation on placement to the judge or referee, and follows through on the case until it is permanently resolved.

In preparing a recommendation on placement, a court appointed volunteer conducts interviews with the child, parents, other family members, social workers, school officials, health providers, and others who are knowledgeable about the child's history.

A review of the duties of both positions reveals that an individual who holds simultaneously the positions of county personnel officer and court appointed volunteer may be subject to an impermissible conflict of interest if that individual, as a court appointed volunteer, finds it necessary to interview a county employee — for example, a social worker or law enforcement officer — whose application or other paper work he has processed as a county personnel officer. Nonetheless, that the individual, as county personnel officer, may have processed an application or other paper work of a county employee that he must subsequently interview in connection with his responsibilities as a court appointed volunteer does not subject the individual to an impermissible conflict of interest. See generally 1991 Op. Att'y Gen. No. 91-036, slip op. at 8 (the possibility for a conflict of interest does not automatically result in a finding of incompatibility).

As indicated by the information you have provided, the duties of the county personnel officer with respect to the processing of applications and other paper work of the county are clearly ministerial. See generally *McNelly v. Clay Township*, 11 Ohio N.P. (n.s.) 33, 23 Ohio Dec. 506 (C.P. Montgomery County 1910) (a ministerial duty is one that involves simply the following of instructions). In this instance the

county personnel officer will exercise no discretion or control regarding the determination of whether an individual is to be hired, or the amount of compensation and other benefits to be paid to a county employee. The county personnel officer position, thus, is not one that exerts control over county employees in general. Consequently, an individual who serves simultaneously as a county personnel officer and court appointed volunteer of a juvenile court is not in a position to exert control or influence over county employees he may interview as a court appointed volunteer. An individual who holds the positions of county personnel officer and court appointed volunteer of a juvenile court, therefore, is not subject to any impermissible conflicts of interest.

Accordingly, it is my opinion, and you are hereby advised that the position of county personnel officer is compatible with the position of court appointed volunteer of a juvenile court.