

OPINION NO. 70-054

Syllabus:

The positions of city manager and a board member of a combined health district are incompatible.

To: James D. Ruppert, Warren County Pros. Atty., Lebanon, Ohio
By: Paul W. Brown, Attorney General, May 1, 1970

I have before me your request for my opinion asking whether an individual may concurrently serve as a board member of a combined health district and as a city manager of a city located within the health district.

The authority to establish a combined health district in a county is found in Section 3709.10, Revised Code. This section states that the combined health districts are to be governed as provided for general health districts which, in turn, are defined in Section 3709.22, Revised Code. The duties of a city manager are prescribed in Section 705.59, Revised Code.

There are no constitutional or statutory provisions which specifically prohibit one person from simultaneously holding the two offices in question and, as such, it is necessary to use the common law test as provided in The State of Ohio, ex rel. Attorney General v. Frank Gebert, 12 C.C. (N.S.) 274, 275 (1909), which held:

"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."

Section 3709.21, Revised Code, gives authority to the board of a general health district to pass rules and regulations which it finds:

"* * * are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, statement, or suppression of nuisances. Such board may require that no human, animal, or household wastes from sanitary installations within the district be discharged into a storm sewer, open ditch, or watercourse without a permit therefor having been secured from the board under such terms as the board requires.
* * *"

Section 3709.22, supra, continues in similar language stating that:

"The board may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary

to protect the public health and to prevent disease."

The City manager, under his duties outlined in Section 705.59, supra, must, among other responsibilities, "see that the laws and ordinances are faithfully executed," "recommend measures for adoption to the council," and "prepare and submit to the council a tentative budget for the next fiscal year."

It is quite possible to visualize circumstances under which an individual serving simultaneously as a city manager and a member of a combined county health board would have conflicting duties and responsibilities. The combined health district may be required to abate or suppress a nuisance under Section 3709.22, supra, which had been committed by the city. Under this circumstance, the city manager would be required to support the interests of the city on one hand and that of the combined health district board on the other.

Further conflict of duties might present itself when the board of a combined health district would desire to pass rules and regulations regarding the public health and the prevention or restriction of disease under Section 3709.21, supra. The city manager in executing his duties might again be taking a different position from the board's desire to pass certain rules and regulations and as such would have a conflict of duties and responsibilities between the two positions.

The city manager, under Section 705.59, supra, must prepare and submit a budget to the council. It is quite possible for him to be in a position of conflicting interests by being a member of the board of a combined health district.

It is therefore my opinion and you are hereby advised that the positions of city manager and a board member of a combined health district are incompatible.