

**OPINION NO. 69-059**

**Syllabus:**

Pursuant to Section 5715.02, Revised Code, a member of the County Board of Revision is not disqualified from participating in the hearing of a complaint about the assessment of real property for tax purposes so long as the complaint is not his own and so long as there is no overriding natural inclination to prejudge the complaint.

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**To: Richard J. Rinebolt, Hancock County Pros. Atty., Findlay, Ohio**  
**By: Paul W. Brown, Attorney General, June 10, 1969**

I have before me your request for my opinion on a question in relation to Section 5715.02, Revised Code.

Section 5715.02, Revised Code, reads as follows:

"The county treasurer, county auditor, and the president of the board of county commissioners shall constitute the county board of revision. Provided, that each such official may, from time to time, appoint a qualified employee from his office to serve on such board in his place and stead for the purpose of hearing complaints as to the value of real property and such other matters which may be presented to the board. Each appointee shall submit in writing to the official for whom he is acting his findings and recommendations with respect to the matter in which he had participated; and such recommendations may, at the option of the appointing official, be adopted or modified by him when formally acting in the matter.

"A majority of the county board of revision shall constitute a quorum to hear and determine any complaint, and any vacancy shall not impair the right of the remaining members of such board to exercise all the powers thereof so long as a majority remains.

"Each member of a county board of revision may administer oaths."

You stated in your letter that approximately 3000 complaints in connection with the assessment of real property in Hancock County have recently been filed with the Hancock County Auditor pursuant to the following part of Section 5715.01, Revised Code:

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"There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation."

You noted that the President of the Hancock County Board of County Commissioners, who is a member of the County Board of Revision, has filed complaints in connection with assessments of real property which he owns. You correctly assert that he could disqualify himself as far as his complaints are concerned. He should do so because he has a direct pecuniary interest in his own complaint. Such disqualification would not impair the right of the remaining members of the Board of Revision to exercise all of their powers. Section 5715.02, *supra*, states that "any vacancy shall not impair the right of the remaining members of such board to exercise all the powers thereof so long as a majority remains."

The remaining question is whether or not the President is also disqualified from participating in the hearings of the other complaints that have been filed.

The Court in State, ex rel. Taylor v. Pinney, 13 O.D.N.P. 210 (1902), stated that "It is a doctrine of our law, as old as the principles of equity, that an agent in the execution of his

agency, shall not be permitted to put himself in a position antagonistic to his principal. An agent, by accepting the undertaking committed to his care, impliedly agrees that he will use his best endeavors to further the interest of his principal. This principle of law precludes him absolutely from dealing with himself, either directly or indirectly. \* \* \* This salutary principle of the law applies as well to public as to private agents, and public officials, who are the agents of the public, will not be permitted to put themselves in a position antagonistic to the public interests which are represented and which it is their duty to protect. \* \* \* The self-interest of the public official and the public interests which will be represented must not be brought into conflict."

The conflict of self-interest and public interest is clear in a situation in which a member of the Board of Revision would hear his own complaint. The conflict between these two interests is, however, not as apparent where a member of the Board of Revision hears claims which are not his own, but which are the claims of other persons in his county.

The Supreme Court of Ohio in Probasco v. Raine, 50 Ohio St. 378, 34 N.E. 536 (1893), stated that "almost every officer in this state is more or less, directly or indirectly, interested in the result of the duties by him performed, whether ministerial or judicial, but such interest does not disqualify him from performing his official duties." The Court noted that the defendant in that case, an auditor, "acts under oath, and good faith and an honest purpose in the discharge of his official duties are to be presumed."

In discussing the question of the "interest" of the auditor in the Probasco case, supra, the Court stated at page 392 that a "judge who is a large taxpayer in his county or city, is not thereby disqualified from sitting in judgment in cases against his county or city \* \* \*. The rule insisted upon in the case by plaintiff, as to the interest of the auditor, would disqualify every member of this court from sitting as a judge in the decision of this case."

The case of The State, ex rel. Turner v. Marshall, 123 Ohio St. 586 (1931), bears discussion in reference to the problem before us. The syllabus of that case reads as follows:

"A judge is disqualified to preside in the trial of a case when his relation to the parties therein or to the subject matter of the action is such that a natural inclination to prejudice the case arises therefrom."

Judge Allen stated at page 587 of this decision that "under the ramification of the social and business interests conceded to exist between the judge of the Court of Common Pleas and the defendants in the four actions covered by this record, any one, whether consciously or unconsciously, would have a natural inclination to prejudice the several cases."

Applying the reasoning found in the Probasco case, supra, to the situation at hand, it can be said that the President of the Hancock County Board of County Commissioners, as a member of the County Board of County Commissioners, as a member of the County Board of Revision, will have some "interest" in the re-

sult of the decisions he makes in regard to the complaints that he hears. The fact that a member of the Board of Revision will hear claims which are somewhat similar to his own raises the issue of his good faith and his honesty, but, as the Probasco Court pointed out, good faith and an honest purpose in the discharge of his official duties are to be presumed since he acts under his oath of office. This presumption may, however, be overcome, as the Turner case, supra, seems to indicate, if there are "business interests" between the parties that produce an overriding "natural inclination to prejudge the case."

In conclusion, it is my opinion and you are hereby advised that pursuant to Section 5715.02, Revised Code, a member of the County Board of Revision is not disqualified from participating in the hearing of a complaint about the assessment of real property for tax purposes so long as the complaint is not his own and so long as there is no overriding natural inclination to prejudge the complaint.