

OPINION NO. 85-029**Syllabus:**

The positions of trustee of a regional airport authority and county commissioner of a county included within the regional airport authority are incompatible.

To: John J. Plough, Portage County Prosecuting Attorney, Ravenna, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 19, 1985

I have before me your request for my opinion concerning whether the positions of county commissioner and member of a regional airport authority are compatible. In your letter of request you state:

In 1965, the Portage County Commissioners created the Portage County Airport Authority which functioned until 1984 at which time the Portage County Regional Airport Authority was created coextensive with the territorial boundaries of Portage County, Ohio. [Pursuant to the resolution creating the authority] the authority is composed of a five member board, three of which are duly elected or appointed Portage County Commissioners and the remaining two are to be appointed by the Commissioners.

R.C. Chapter 308 provides for the creation and operation of a regional airport authority, "for the purpose of acquiring, constructing, operating, and maintaining airports and airport facilities." R.C. 308.02. R.C. 308.03, which provides for the creation of a regional airport authority, reads, in part, as follows:

Any two or more contiguous counties or any single county may create a regional airport authority by the adoption of a resolution by

the board of county commissioners of each county to be included in the regional airport authority. Such resolution shall state:

....
 (E) The number, term, compensation if any, and manner of selecting the members of the board of trustees of the regional airport authority;

....
 The regional airport authority provided for in such resolution shall be deemed to be created upon the adoption of such resolution by the board of county commissioners of each county enumerated in the resolution.

....
 The territorial boundaries of a regional airport authority shall be coextensive with the territorial boundaries of the counties included within the regional airport authority.

See R.C. 308.04 ("within sixty days after a regional airport authority has been created under section 308.03 of the Revised Code, the board of trustees for such regional airport authority shall be appointed as provided in the resolution creating it").

Section four of the resolution creating the Portage County Airport Authority provides that the board of trustees of the Authority shall be composed of five members, three of whom are county commissioners and two of whom are appointed by the county commissioners.

1979 Op. Att'y Gen. No. 79-111 sets forth seven criteria for determining whether two public positions are incompatible. Two positions are considered incompatible if, inter alia, one is subordinate to or a check upon the other, or if an individual serving in both positions would be subject to a conflict of interest. See State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274 (Franklin County 1909). From an examination of the relationship between a regional airport authority and the county commissioners, as set forth in R.C. Chapter 308, I conclude that one person who served as county commissioner and member of the board of trustees of a regional airport authority would be subject to various conflicts of interest, and thus the two positions are incompatible.

I note first that R.C. 308.17 provides:

The board of county commissioners of any county included within a regional airport authority may appropriate annually, from moneys to the credit of the general fund of the county and not otherwise appropriated, that portion of the expense of the regional airport authority to be paid by such county as provided in the resolution creating the regional airport authority adopted under section 308.03 of the Revised Code, or by any amendment thereto.

See generally 1977 Op. Att'y Gen. No. 77-084; 1971 Op. Att'y Gen. No. 71-074; 1966 Op. Att'y Gen. No. 66-056. Section seven of the resolution creating the Portage County Airport Authority states: "The Board of County Commissioners may, at its discretion, from time to time, appropriate funds, set aside funds, and/or encumber funds from the General Fund of the County for the operation and/or improvement of the airport facility." It is well established that where one public position has the power to appropriate funds to a second position, one person may not serve in both positions. See 1983 Op. Att'y Gen. No. 83-035; 1975 Op. Att'y Gen. No. 75-032. It is apparent that as a trustee of a regional airport authority, a person would be interested in obtaining the most possible money from the county. A county commissioner, however, must balance the needs of the airport authority against other, competing financial demands faced by the county. Thus, a person who served in both positions would be subject to a conflict of interest.

A person who served as trustee of a regional airport authority and county commissioner would face other potential conflicting demands. The airport authority has the power to contract with the county for various purposes. See R.C.

308.06(B), (J), and (K); R.C. 308.14. The authority of a board of county commissioners and a board of trustees of a regional airport authority to contract with each other indicates that one person who served as county commissioner and airport trustee would be subject to a conflict of interest. See 1984 Op. Att'y Gen. No. 84-059. Further, a trustee of a regional airport authority is statutorily prohibited from having an interest, direct or indirect, in any contract let by the authority. R.C. 308.04. See R.C. 2921.42(A)(1) (a public official shall not knowingly authorize or use the authority of his office to authorize a public contract in which he has an interest); R.C. 2921.42(A)(4) (no public official shall knowingly have an interest in the benefits of a public contract entered into by or for the use of the political subdivision or governmental agency with which he serves). See generally 1968 Op. Att'y Gen. No. 68-111. A county commissioner is also prohibited from being concerned "directly or indirectly, in any contract for work to be done or material to be furnished for the county," R.C. 305.27, and is subject to the terms of R.C. 2921.42. The Ohio Ethics Commission, which is charged with rendering advisory opinions interpreting R.C. 2921.42, R.C. 102.08, has concluded that a prohibited interest may be fiduciary in nature, as well as pecuniary. See Ohio Ethics Commission, Advisory Opinion No. 81-008. See also 1984 Op. Att'y Gen. No. 84-097 (a county officer may not serve as a trustee of a nonprofit hospital corporation with which the county contracts). Thus, one person may not serve as a county commissioner and trustee of a regional airport authority where the county and airport authority have contracted with each other.

I note also that a board of trustees of a regional airport authority may exercise the right of eminent domain to take property and facilities belonging to the county, if certain conditions are met. R.C. 308.06(I); R.C. 308.07(B). Again, it is apparent that the interests of the airport authority and county would conflict in such a situation. See Op. No. 84-059.

In conclusion, it is my opinion, and you are advised, that the positions of trustee of a regional airport authority and county commissioner of a county included within the regional airport authority are incompatible.