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SYLLABUS:

The office of district park commissioner appointed under Section 1545.05, Revised Code, is incompatible with being a member of a metropolitan housing authority under Section 3735.27 of the Revised Code.

Columbus, Ohio, April 3, 1963

Hon. Paul J. Mikus
Prosecuting Attorney
Lorain County
Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Will you kindly advise our office as to the compatibility of one person holding the office of District Park Commissioner (O.R.C. Section 1545.05) and being a member of the Metropolitan Housing Authority (O.R.C. Section 3735.27), particularly, in view of Section 1545.11 whereby the District Park Board has the power to acquire property and Sections 3735.31 and 3735.32 providing the Metropolitan Housing Authority with the power of eminent domain in acquiring property. The Metropolitan Housing Authority and the said Park District are within the same county.”

Neither the Constitution nor the statutes prohibit the concurrent holding by a single person, of the office of district park commissioner and membership on the metropolitan housing authority. Therefore, the answer to your inquiry depends upon the question of whether or not the two positions are incompatible.

“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.” *The State of Ohio, ex rel. Attorney General v. Frank Gebert*, 12 C.C. (N.S.), 274, (1909).

Upon the creation of a park district, Section 1545.05 of the Revised Code authorizes the appointment of three commissioners. Such commissioners are to constitute the board of park commission-

ers of the park district in accordance with Section 1545.07 of the Revised Code.

Pursuant to Section 1545.11 of the Revised Code, the board of park commissioners is empowered to acquire land for such purposes as are stated therein. Acquisition may be made by gift, devise, purchase, or by appropriations.

Section 3735.27 of the Revised Code provides for the appointment of five persons to constitute a metropolitan housing authority. Public officials, other than those officials having the power to appoint the members of the housing authority, may serve as members of the authority, notwithstanding any statute, charter, or law to the contrary. The capacity of other public officials to serve as members of the housing authority is, however, subject to the common law rules of compatibility of offices.

In accordance with Sections 3735.31 and 3735.32 of the Revised Code, a metropolitan housing authority is provided with the power of eminent domain in acquiring property.

A comparison of the duties required of a district park commissioner and a member of a metropolitan housing authority discloses a specific and substantial area of common activity. The duties to be performed by each position are discretionary in nature. To fulfill the goals of the park commissioner and the housing authority, decisions must be made by the members of each as to what land is to be appropriated for its own purpose.

The possibility of conflict as to these decisions is present where one individual is a member of the park commission and the housing authority. This possibility is emphasized in light of *St. Stephen's Club v. Youngstown Metropolitan Housing Authority*, 160 Ohio St., 194, 115 N. E. 2d, 385 (1953), where it was stated that the erection of low-rent housing units need not be located in a cleared slum area.

An additional problem is posed by the fact that under certain limited circumstances, property may be appropriated although the property has been previously devoted to another public use. 19 Ohio Jurisprudence 2d, page 455, Eminent Domain, Section 42.

Therefore, it is my opinion and you are hereby advised that the office of district park commissioner appointed under Section

1545.05, Revised Code, is incompatible with being a member of a metropolitan housing authority under Section 3735.27 of the Revised Code.

Respectfully,
WILLIAM B. SAXBE
Attorney General