

**Note from the Attorney General's Office:**

1953 Op. Att'y Gen. No. 53-3249 was questioned by  
2013 Op. Att'y Gen. No. 2013-002.

3249

1. CONSERVANCY DISTRICT, OFFICE OF DIRECTOR—INCOMPATIBLE WITH OFFICE OF CITY ENGINEER OF MUNICIPALITY LOCATED WITHIN DISTRICT—SECTION 6101.10, RC, 6828-8 GC.
2. BOARD OF DIRECTORS OF CONSERVANCY DISTRICT—OFFICE OF MEMBER—“AN OFFICE OF PUBLIC TRUST”—INCUMBENT SHOULD CONTINUE TO SERVE FOLLOWING EXPIRATION OF STATUTORY TERM UNTIL SUCH TIME AS SUCCESSOR APPOINTED AND QUALIFIED.

## SYLLABUS:

1. The office of director of a conservancy district, appointed under the provisions of Section 6101.10, Revised Code, Section 6828-8, General Code, is incompatible with the office of city engineer of a municipality located within such district.

2. The office of member of the board of directors of a conservancy district, appointed under the provisions of Section 6101.10, Revised Code, Section 6828-8, General Code, is “an office of public trust” within the meaning of Section 3.01, Revised Code, Section 8, General Code, and the incumbent of such office continues to serve therein following the expiration of his statutory term until such time as his successor is appointed and qualified.

Columbus, Ohio, November 16, 1953

Maumee Watershed Conservancy District  
Defiance, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“Under authority of Section 6828-8 G.C. the Conservancy Court appointed O.H.G., Director of the Maumee Watershed Conservancy District for a term of three years. Mr. G. took his oath of office and entered upon his duties on October 18, 1950. His term expires October 18, 1953, and the Conservancy Court will not convene until February 1, 1954, to consider an appointment.

“Query: Does Mr. G. continue in office as Director until his successor is appointed and qualified, or is his office vacant as of October 18, 1953?

“Mr. G. at the present time is engineer of the City of Findlay, and among other duties is superintendent of the Water Works

and Sewage Disposal Plant. He is under Civil Service. The City of Findlay, in its entirety, is within the boundaries of the Maumee Watershed Conservancy District.

“Query: Is the office of City Engineer incompatible with the office of Director of Maumee Watershed Conservancy District?”

Section 6101.10, Revised Code, Section 6828-8, General Code, which provides for the appointment of directors of conservancy districts, reads as follows:

“Within thirty days after entering the decree incorporating a conservancy district, the court shall appoint three persons, at least two of whom are resident freeholders within the district, as a board of directors of the conservancy district, one for a term of three years, one for a term of five years, and one for a term of seven years. At the expiration of their terms of office, appointments shall be made for terms of five years. The court shall fill any vacancy which may occur on the board for the unexpired term.”

It will be observed that the only authorization for the filling of vacancies on the part of the directors of a conservancy district is by appointment by the conservancy court. There is a statutory declaration of policy, however, against the existence of vacancies in public offices where the term of the incumbent has expired and no appointment or reappointment of a successor has been made by the appointing authority. In this connection we find the following provision in Section 3.01, Revised Code, Section 8, General Code:

“A person holding an office or (of) public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state.”

It takes but a cursory examination of the statutes providing for the organization and operation of a conservancy district to conclude that the office of director of such district is “an office of public trust” within the meaning of this statutory provision. I am unable to discover any provision in the constitution or statutes of this state which would bring this office within the proviso above stated, and therefore conclude that the individual in question will continue in his office beyond the expiration of his statutory term of October 18, 1953, until such time as his successor is appointed and qualified.

Coming now to the question of compatability of the office of director of a conservancy district and that of engineer of a city located in such district, we may note that the test of compatability of office most commonly followed in Ohio is found in 32 Ohio Jurisprudence, 908, 909, section 48, as follows :

“ \* \* \* One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other,—as an officer who presents his personal account for audit and at the same time is the officer who passes upon it,—or is in any way a check upon the other, or where a contrariety and antagonism would result in an attempt by one person to discharge the duties of both.”

In the instant case there can be scarcely any doubt that a contrariety and antagonism would result in an attempt of one person to discharge the duties of both of these offices. From an examination of the provisions of Section 6101.08, Revised Code, Section 6828-6, General Code, we find provision made for a hearing before the conservancy court on a petition for the establishment of the proposed district; and in Section 6101.71, Revised Code, Section 6828-63, General Code, it is provided that where it is desired to construct improvements within the district, subdistricts may be organized therein upon petition of the property owners concerned. A hearing is thereafter required to be had before the conservancy court in the same manner and to like effect as is provided in Section 6101.08, Revised Code, Section 6828-6, General Code, supra, in the initial hearing to establish the district. In such hearings objections “may be filed by any public corporation which has not signed such petition.” It is thus conceivable that in the conduct of proceedings under the provisions of Section 6101.71, Revised Code, Section 6828-63, General Code, supra, to establish subdistricts within a conservancy district, the director here involved would encounter a conflict of interest by virtue of the fact that he is employed by a public corporation which might wish to register its objections in the course of such proceedings.

By reference to Section 6101.13, Revised Code, Section 6828-12, General Code, it will be observed that following the organization of the board of directors that agency is required to prepare or cause to be prepared a plan for improvements of the district. Thereafter, following the approval of such plan by the state department of health, the statute requires that a

hearing be had, at which time objections thereto shall be heard. Here again, any public corporation affected by the operation of such plan is given the opportunity to register its objections, and in this instance also it is apparent that such activity could readily raise a conflict of interests between the board of directors and the agency by which the individual director here involved is employed.

By reference to Section 6101.24, Revised Code, Section 6828-24, General Code, we find that the board is authorized to permit the use of water or water courses within the district by landowners, municipal corporations and other users of water. Specifically this section provides in part as follows :

“Persons or public corporations desiring to secure such use of the waters or watercourses of the district, or of the district rights therein, may apply to the board of directors of the conservancy district for lease, purchase, or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity of such use, the amount of water desired, and the place of use. In case any party makes greater, better, or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible or reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as is determined by the board, subject to the approval of the court.

“Preference shall be given in the following order :

“(A) To domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farmyard use, or for watering stock ;

“(B) To supplying water used in processes of manufacture, for the production of steam, for refrigerating, cooling, and condensing, and for maintaining sanitary conditions of stream flow ;

“(C) For irrigation, power development, recreation, fisheries, and for other uses.”

From the foregoing provisions it is quite clear that there would be a definite conflict of interest in the duties attached to each of the offices which the individual here in question must discharge. Where in one capacity, i.e., as a city engineer of Findlay and superintendent of water works of that city, he is under the duty to promote the city's claim of right to the use of the waters of the district so as to obtain such water at a favor-

able rate of compensation, and to convince the board of the need of the municipality in order to obtain what preference is due, he is scarcely in a position where he could serve impartially on the board of directors in determining what is a reasonable compensation and what preference should be given to such municipality. For this reason it is my view that:

1. The office of director of a conservancy district, appointed under the provisions of Section 6101.10, Revised Code, Section 6828-8, General Code, is incompatible with the office of city engineer of a municipality located within such district.

2. The office of member of the board of directors of a conservancy district, appointed under the provisions of Section 6101.10, Revised Code, Section 6828-8, General Code, is "an office of public trust" within the meaning of Section 3.01, Revised Code, Section 8, General Code, and the incumbent of such office continues to serve therein following the expiration of his statutory term until such time as his successor is appointed and qualified.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General