

**OPINION 65-69****Syllabus:**

1. The office of township trustee is incompatible with that of member of a regional planning commission in which such township is represented.
2. The office of county commissioner is incompatible with that of member of a regional planning commission in which such county is represented.
3. The office of member of a municipal planning commission is incompatible with that of member of a regional planning commission in which such municipality is represented.

To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio  
By: William B. Saxbe, Attorney General, April 23, 1965

I have before me your request for my opinion which reads in part as follows:

"The Summit County Planning Commission has requested clarification of 1964 Ohio Attorney General Opinion No. 959, in connection with incompatibility of a member of a county planning commission also serving as a member of a village planning commission

\* \* \* \* \*

"Is the office of the county commissioner incompatible with membership in a regional planning commission? Is the office of township trustee incompatible with membership in a regional planning commission? Is the employment in and membership of a city planning commission incompatible with membership in a regional planning commission?"

\* \* \* \* \*

Section 713.21, Revised Code, which authorizes the establishment of regional planning commissions, provides in part as follows:

"The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may cooperate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission.

"The number of members of such regional planning commission, their method of appointment and the proportion of the costs of such regional planning to be borne respectively by the various municipal corporations, townships, and counties in the region shall be such as is determined by the planning commissions and boards."

It is provided in Section 713.23, Revised Code, that the county and regional planning commissions shall:

\* \* \* make studies, maps, plans and other reports of the region or county respectively which may include adjoining areas, showing the commission's recommendation for systems of transportation, highways, park and recreational facilities, the water supply, sewerage and sewage dis-

posal, garbage disposal, civic centers, and other public improvements and land uses which affect the development of the region or county respectively,  
\* \* \*"

Section 713.24, Revised Code, provides that the county or regional planning commission must certify a copy of the plan which it has formulated to each municipal planning commission within the county or region, and Section 713.25, Revised Code, provides in part that:

"The planning commission of any municipal corporation to which a regional or county plan is certified under section 713.24 of the Revised Code, may adopt such plan, and it shall thereupon have the same force within such municipal corporation as is provided by law or charter for plans prepared and adopted by the local planning commission. The board of county commissioners may adopt such plan so far as it relates to nonmunicipal territory. \* \* \*"

In nearly every case involving the question of compatibility of public offices, the test which is applied is that set out in State, ex rel., Attorney General v. Gebert, 12 C.C. (N.S.) 274, 275, as follows:

"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."

In Opinion No. 2763, Opinions of the Attorney General for 1962, my predecessor concluded in branch 2 of the syllabus that "A member of a regional or county planning commission established pursuant to Section 713.21 or Section 713.22, Revised Code, is a public officer \* \* \*" Thus, in order for one person to hold another public office at the time he is a member of a regional or county planning commission, a determination must first be made that the other office is not incompatible with that of a member of the regional or county planning commission.

Since the first two questions presented in your request are, in essence, quite similar, I am of the opinion that they may be answered together.

In 42 Am. Jur. 937, Section 71, it is stated that:

"One of the most important tests as to whether offices are incompatible is found in the principle that the incompatibility is recognized whenever one is subordinate to the other in some of its important and principal duties, and subject in some degree to its revisory power. Thus, two offices are incompatible where the incumbent of the one has the power of appointment to the other office or the power to remove its incumbent, even though the contingency on which the power

may be exercised is remote." (Citing Ehlinger v. Clark, 117 Tex. 547, Attorney General, ex rel., Moreland v. Detroit, 112 Mich., 145.)

Section 713.21, supra, provides that the members of regional planning commissions are to be appointed pursuant to the methods adopted by the various townships, municipalities, and counties comprising the region in which the planning commission is established. The effect of this provision is to give the boards of county commissioners and township trustees within the region a power of appointment with respect to the membership of the regional planning commission.

In Opinion No. 109, Opinions of the Attorney General for 1963, in which it was held that the office of township trustee is incompatible with the position of advisor to the county planning commission, I pointed out that:

"A township trustee cannot, of course, abandon his responsibilities to the township while acting in an advisory capacity to the county planning commission. As a township trustee he may be required to review matters relating to the location of highways, parks, civic centers and other improvements considered advantageous to the township. He will be required to pass on the advisability of these improvements as a member of the board of township trustees. As an advisor to the county planning commission he may be required to render advice concerning these same matters. In such advisory capacity he could be in a position to influence recommendations either similar or opposed to those of the board of township trustees.

"In addition to the above, it should also be noted that as an advisor to the county planning commission, a township trustee could be in a position to influence recommendations as to county improvements directly affecting his township which will be submitted to the board of county commissioners for approval. As a member of the board of township trustees he may be required subsequently to submit recommendations to the board of county commissioners which depart from those of the county planning commission. In such event, as provided by Section 713.25, Revised Code, the board of county commissioners could not, except by unanimous vote, approve the recommendations of the board of township trustees. Consequently, as advisor to the county planning commission, a township trustee could be in a position to influence recommendations which might subsequently interfere with the exercise of his duties as a township trustee."

The only difference between the relationship considered in Opinion No. 109, supra, and that presented in the first two questions in your request is that in the latter the township or county commissioner will be acting in an official rather

than an advisory capacity. In order to fulfill both offices, he will be required to act in a legislative capacity at both ends of the spectrum. In the 1963 Opinion the facts gave rise to a situation in which a township trustee could be forced to influence recommendations to the county planning commission, which might later interfere with the exercise of his duties as a township trustee. In the situation which you have suggested, a township trustee or county commissioner will certainly be required to pass upon plans and recommendations as an incident of his office. Thereafter, the same individual may be required to pass upon these same issues as a member of a regional planning commission; in that event an examination of the same issues would have to be made in a different light. For this reason, I feel bound to conclude that the office of member of a regional planning commission cannot be held by one who concurrently holds the office of township trustee or county commissioner.

The third question presented in your request is whether or not the offices of member of a city planning commission and member of a regional planning commission are incompatible.

Section 713.25, supra, provides that when a regional or county planning commission has certified a plan to a municipal planning commission, that commission may adopt such plan, thereby giving it the same effect as it would have if it had been originally prepared and adopted by the municipal planning commission. The establishment of this procedure clearly indicates a legislative intent to create a check upon the regional planning commission through the instrumentality of the municipal planning commission. If one person were permitted to occupy a position on each of these commissions, the theory of the intended check would be destroyed. Therefore, under the test set forth in State ex rel., Attorney General v. Gebert, supra, the positions of member of a regional planning commission and member of a municipal planning commission are incompatible.

Therefore, it is my opinion and you are hereby advised that:

1. The office of township trustee is incompatible with that of member of a regional planning commission in which such township is represented.
2. The office of county commissioner is incompatible with that of member of a regional planning commission in which such county is represented.
3. The office of member of a municipal planning commission is incompatible with that of member of a regional planning commission in which such municipality is represented.