

OPINION NO. 959**Syllabus:**

The position of member of a county planning commission, established pursuant to Section 713.21, Revised Code, is incompatible with the position of member of a city planning commission established pursuant to Section 713.01, Revised Code, when the municipality involved is located within the county.

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To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William B. Saxbe, Attorney General, April 2, 1964

I am in receipt of your request for my opinion which reads as follows:

"May the same person be a member of a

county planning commission and at the same time a member of the city planning commission of a municipality located within that county?"

The standard to be observed as to whether one office is incompatible with another is set out in State, ex rel., Attorney General v. Gebert, 12 C. C. (N.S.) 274 at page 275, wherein it is stated:

"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."

Assuming that your question implies that it is physically possible for one person to discharge the duties both of a member of a city planning commission and member of a county planning commission and assuming that your implication is correct, the question to be answered herein is whether the two above mentioned offices are in any way subordinate to or a check upon one another. To determine this it is necessary to look at the powers and duties of the two commissions.

The legislature has provided for the establishment of a City planning commission by virtue of Section 713.01, Revised Code, and for a county planning commission by virtue of Section 713.22, Revised Code.

The powers and duties of a city planning commission are set out in Sections 713.02 to 713.15, inclusive, Revised Code. These sections provide that the commission among other things shall be the platting commission and that it shall make plans and maps that show the commission's recommendations for the general location, character and extent of public facilities such as streets, parks, utilities, etc. The commission may also adopt plans for the zoning and districting of the municipality. The municipality is then authorized to adopt these plans which control the development of the municipality.

Section 713.23, Revised Code, sets out the powers and duties of a county planning commission as follows:

"The regional or county planning commission 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 disposal, garbage disposal, civic centers, and other public improvements and land uses which affect the development of the region or county respectively, as a whole or as more than one political unit within the region or county, and which did not begin and terminate within the boundaries of any single municipal corporation."

Section 713.24, Revised Code, then states that:

"The regional planning commission of any region, or the county planning commission of any county, shall, after making the regional or county plan as provided by section 713.23 of the Revised Code, certify a copy thereof to the planning commission of each municipal corporation of the region or county, the board of county commissioners and county or regional planning commission of each county or region or part thereof included in the plan."

The municipal planning commission may then adopt the plan and it shall have the same force in the municipality as plans prepared and adopted by that planning commission.
(Section 713.25, Revised Code)

It is thus clear that the interests of the municipality may conflict with and be a check upon a member of both a municipal and county planning commission preventing him from disinterestedly carrying out his duties as a member of the county planning commission. The converse of this would also be true. An individual can not represent the interests of the county and the municipality at the same time as the possibility of a conflict in interests and planning policies may arise.

Therefore, it is my opinion and you are hereby advised that the position of member of a county planning commission, established pursuant to Section 713.21, Revised Code, is incompatible with the position of member of a city planning commission established pursuant to Section 713.01, Revised Code, when the municipality involved is located within the county.