

OPINION NO. 83-010**Syllabus:**

The positions of township administrator and member of a board of health of a general health district are incompatible.

To: J. Walter Dragelevich, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 25, 1983

I have before me your request for an opinion concerning the compatibility of the position of township administrator and the position of member of the board of health of a general health district. You have enclosed a copy of an opinion on this subject issued by your office. I agree with the conclusion reached in that opinion that the positions are incompatible.

There are no specific statutory prohibitions against the simultaneous holding of the position of township administrator and the position of member of the board of health of a general health district. It is, therefore, necessary to examine the question in light of the common law test of compatibility, which asks whether one position is subordinate to or a check upon the other, and whether it is physically possible for one person to discharge the duties of both positions. State ex rel. Attorney General v. Gebert, 12 C.C. (n.s.) 274, 275 (Cir. Ct. Franklin County 1909). The common law analysis includes an examination of whether a person holding more than one position would be subject to a conflict of interest. 1979 Op. Att'y Gen. No. 79-III.

R.C. 505.031 authorizes a board of township trustees to appoint a township administrator, "who shall be the administrative head of the township under the direction and supervision of the board and who shall hold office at the pleasure of the board." The duties of the administrator are set forth in R.C. 505.032, which states:

The township administrator shall, under the direction of the board of township trustees:

- (A) Assist in the administration, enforcement and execution of the policies and resolutions of the board;
- (B) Supervise and direct the activities of the affairs of the divisions of township government under the control or jurisdiction of the board;
- (C) Attend all meetings of the board at which his attendance is required by that body;

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- (D) Recommend measures for adoption to the board;
- (E) Prepare and submit to the board such reports as are required by that body, or as he considers advisable;
- (F) Keep the board fully advised on the financial conditions of the township, preparing and submitting a budget for the next fiscal year;
- (G) Perform such additional duties as the board may determine by resolution.

The board of township trustees may assign to such township administrator any office, position, or duties under its control; such office, position, and duties to be performed under the direction and supervision of the board and to be in addition to those set forth in this section.

Pursuant to these provisions, the township administrator is required to assist in the activities of the board, make recommendations to the board, keep the board advised on the financial condition of the township, and prepare and submit a budget. The administrator serves under the direction of the board of trustees and may be given any duties that are under its control.

The members of a board of health of a general health district are appointed pursuant to R.C. Chapter 3709, see R.C. 3709.02, 3709.03, 3709.07, and have the powers and duties set forth in that chapter and R.C. Chapter 3707. Such a board is authorized by R.C. 3709.21 to "make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances," and by R.C. Chapter 3707 and R.C. 3709.22 to provide for certain types of medical treatment and health inspections and for the abatement of nuisances.

A general health district obtains funding from the townships and municipalities located within the district. Under R.C. 3709.28, the board of health annually prepares an appropriation measure setting forth its expenses for the next fiscal year and submits the measure, together with estimates of revenue which will be available, to the county auditor who, in turn, submits it to the county budget commission. The county budget commission may reduce, but not increase, the amounts in the appropriation measure. Amounts which are not covered by other revenue are apportioned by the auditor among the townships and municipal corporations in the district on the basis of taxable valuations in the townships and municipal corporations. A board of township trustees is authorized by R.C. 5705.01 and 5705.03 to levy taxes and is required by R.C. 5705.05 to include in its general levy "amounts necessary for boards. . .of health."

As your letter of request notes, this office has not issued an opinion dealing directly with the compatibility of the positions of township administrator and member of the board of health of a general health district. This office has, however, previously concluded that the positions of township trustee and member of the board of health of a general health district are incompatible, see 1965 Op. Att'y Gen. No. 65-88, and that the positions of city manager and member of the board of health are incompatible, see 1970 Op. Att'y Gen. No. 70-054. Both of these opinions are instructive in considering your question.

In 1965 Op. No. 65-88, my predecessor followed an earlier opinion—1930 Op. Att'y Gen. No. 2603, vol. III, p. 1718—and concluded that, because the funds necessary to operate a general health district are derived in part from townships, a person serving both as township trustee and as member of the board of health of a general health district "might be influenced by the needs of one at the expense of the [other]." Id. at 2-191. The relevant provisions governing the funding of a general health district remain substantially as they were at the time of issuance of that opinion. See R.C. 3709.28, 5705.01, 5705.03, 5705.05. As a result, there remains the possibility that a township representative acting as health board member would have conflicting interests when dealing with the financial and budgeting activities of the two bodies.

It is true that a township administrator serves at the direction of the board of township trustees and does not have ultimate responsibility for actions by the board. It is, nonetheless, apparent from the provisions of R.C. 505.032 that the administrator will have substantial involvement in the financial operations of the township, in such matters as keeping the board advised of the financial condition of the township and preparing the budget, and will also have the responsibility of making recommendations to the trustees. As a result, a township administrator who served as a member of a board of health of a general health district would be subject to the same conflicting interests that were discussed in Op. No. 65-88 and 1930 Op. No. 2603. See generally 1977 Op. Att'y Gen. No. 77-037 at 2-132 (finding that the position of township administrator is incompatible with that of township clerk on the basis that the position of township trustee is incompatible with that of township clerk and stating that "[t]he duties performed by one occupying the relatively new office of township administrator are analogous to and derivative of those of the office of township trustee").

In Op. No. 70-054, another of my predecessors concluded that the positions of city manager and board member of a combined health district¹ are incompatible. The duties of a city manager, prescribed in R.C. 705.59, are, in many respects, analogous to those of a township administrator.² Op. No. 70-054 concludes that a city manager may not serve as a member of the board of a combined health district because the city manager's duties with respect to execution of laws and ordinances, making recommendations to the council, and preparing a tentative budget might conflict with such duties of the board of health as passing rules and regulations regarding the public health and prevention or restriction of disease, R.C. 3709.21, or taking action against nuisances (including any committed by the city), R.C. 3709.22. See also R.C. Chapter 3707. It is apparent that similar conflicts in loyalties and responsibilities could easily occur if a township administrator were a member of a board of health of a general health district.

Based on the foregoing, I conclude that a person who attempted to serve both as township administrator and member of the board of health of a general health district would be subject to situations in which his loyalties to the two different bodies would conflict. It is, therefore, my opinion, and you are hereby advised, that the positions of township administrator and member of a board of health of a general health district are incompatible.

¹ A combined health district constitutes a general health district. R.C. 3709.07.

² R.C. 705.79 states:

The city manager shall:

- (A) See that the laws and ordinances are faithfully executed;
- (B) Attend all meetings of the council at which his attendance is required by that body;
- (C) Recommend measures for adoption to the council;
- (D) Appoint all officers and employees in the classified service of the municipal corporation, subject to Chapters 124. and 705. of the Revised Code;
- (E) Prepare and submit to the council such reports as are required by that body, or as he deems advisable;
- (F) Keep the council fully advised of the financial condition of the municipal corporation and its future needs;
- (G) Prepare and submit to the council a tentative budget for the next fiscal year;
- (H) Perform such other duties as the council determines by ordinance or resolution;
- (I) Sign all contracts and bonds for and on behalf of the municipal corporation.