

**OPINION NO. 86-060****Syllabus:**

The position of member of the board of health of the general health district of a county is incompatible with the position of member of the board of education of a local school district when part of the territory of the local school district and some of the facilities of the local school district are located within the general health district. (1951 Op. Att'y Gen. No. 787, p. 520, approved and followed.)

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**To: Steve C. Shuff, Seneca County Prosecuting Attorney, Tiffin, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, August 21, 1986**

I have before me your request for an opinion concerning the compatibility of the position of member of the board of health of the general health district of a county and the position of member of the board of education of a local school district. The school district in question is located in two counties, one of them being the county in which the general health district is located.

Pursuant to R.C. 3709.01, the townships and villages in each county are combined into a health district known as a general health district. See generally R.C. Chapter 3709; 1985 Op. Att'y Gen. No. 85-033. A local school district which includes territory within the county is, therefore, located at least partly within the general health district of the county. See R.C. 3311.01; R.C. 3311.03; cf. 1986 Op. Att'y Gen. No. 86-038 (considering situation in which part of the territory of a city school district lies within the territorial jurisdiction of a general health district). Thus, you have raised the question whether any statute or principle of law prohibits an individual from serving both as a member of the board of health of a general health district and as a member of the board of education of a local school district that includes part of the territory of the health district. I assume, for purposes of this opinion, that at least some of the facilities of the local school district are located within the general health district in question.

The question you have raised was addressed by one of my predecessors in 1951 Op. Att'y Gen. No. 787, p. 520. The syllabus of that opinion states: "The office of member of a county health board and that of member of a local board of education are incompatible and a member of a local board of education may not also serve as a member of a county board of health." I concur in that conclusion.

Pursuant to R.C. 3707.03, the board of health of a general health district is responsible for abating nuisances found upon school property. R.C. 3707.03 states:

The board of health of a city or general health district shall abate all nuisances and may remove or correct all conditions detrimental to health or well-being found upon school property by serving an order upon the board of education, school board, or other person responsible for such property, for the abatement of such nuisance or condition within a reasonable but fixed time. The board of health may appoint such number of inspectors of schools and school buildings as is necessary to properly carry out this section. (Emphasis added.)

The board of health is also required to inspect the sanitary condition of schools and school buildings and is authorized to disinfect the buildings or to close them during epidemics or threatened epidemics. See R.C. 3707.26. In addition, the board of health is authorized to provide for the medical and dental supervision of school children and for the inspection of schools. See R.C. 3709.22.

The fact that the board of health may direct orders to the board of education to have particular action taken makes it clear that the board of education may, in some circumstances, be subordinate to the board of health, and that a conflict of interest would confront an individual who attempted to hold positions on both boards. See generally Op. No. 86-038, slip op. at 1-2 (setting forth the "common law rules that positions are considered incompatible if one is subordinate to or a check upon the other, or if an individual serving in both positions would be subject to a conflict of interest" (citations omitted)). As was stated in 1951 Op. No. 787 at 522: "This power of inspection of schools would seem to create a conflict of interest which would render freedom of action on the part of a member serving on both boards difficult, if not impossible." See also, e.g., Op. No. 86-038; 1950 Op. Att'y Gen. No. 2469, p. 721 (concluding that the positions of member of a city board

of health and member of a city board of education are incompatible and stating, at 722: "where one individual is a member of both boards it would become his duty as a member of the health board to participate in the making of an order directed to himself as member of the education board. This situation inescapably gives rise to a division of loyalty of such individual between his two offices...").

I do not believe that the result in your case is changed by the fact that the school district is located partly within the general health district in question and partly within a different county and, thus, a different health district. A related situation was considered in Op. No. 86-038. That opinion concludes that the position of health commissioner of the general health district of a county is incompatible with the position of member of the board of education of a city school district and with the position of member of the board of education of a joint vocational school district, when part of the territory and some or all of the buildings of the respective school district lie within the territorial jurisdiction of the health district. Op. No. 86-038 states, slip op. at 5: "An individual who attempted to hold both positions would be subject to a conflict of interest in being involved in the management and operation of schools and having a duty of loyalty to the board of health." I believe that a conflict of interest similarly exists between the positions of member of the board of health of the general health district of a county and member of a local school board in the situation here under consideration--that is, a situation in which a portion of the school district, including some of the facilities of the district, is located within the general health district.

It is, therefore, my opinion, and you are hereby advised, that the position of member of the board of health of the general health district of a county is incompatible with the position of member of the board of education of a local school district when part of the territory of the local school district and some of the facilities of the local school district are located within the general health district. (1951 Op. Att'y Gen. No. 787, p. 520, approved and followed.)