

**OPINION NO. 70-004****Syllabus:**

The office of county commissioner is not compatible with the office of part-time health commissioner of a city health district.

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**To: Robert G. Rawson, Washington County Pros. Atty., Marietta, Ohio**  
**By: Paul W. Brown, Attorney General, January 21, 1970**

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

"Is the office of county commissioner compatible with the office of part-time health commissioner of a city health district?"

An examination of the code sections pertaining to boards of county commissioners and to members of a city board of health and their employees discloses to statutory prohibition against a single person serving in connection with both boards

at the same time. An incompatibility between these two positions, if it exists, must, therefore, be founded upon the common law rule of incompatibility, which is stated in State, ex rel., Attorney General v. Gebert, 12 C.C. (N.S.) 274, at page 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."

Section 307.01, Revised Code, sets out duties of the board of county commissioners and reads, in part, as follows:

"A courthouse, jail, public comfort station, offices for county officers, and a county home shall be provided by the board of county commissioners when in its judgment any of them are needed. \* \* \*"

As to the duties provided by statute for a board of city health district, Section 3709.22, Revised Code, reads, in part, as follows:

"Each board of health of a city or general health district shall study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The board may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and county homes, and other charitable, benevolent, and correctional institutions. \* \* \*"

From a reading of these foregoing statutory provisions, it is apparent that the duties of the office of commissioner of a city health district provide a check upon the duties of a county commissioner and causes the latter to be subordinate to the former. The duties of the county commissioners include the providing of county jails, county infirmaries, and buildings for county offices. The duty of inspection of these same buildings is made a part of the duties of the board of the city health district. It follows that the duties of the two positions fall within the common law test of incompatibility. The reasoning applicable in this case is directly analogous to the reasoning applied in the opinion to which you refer in your letter set out in Opinion No. 2206, Opinions of the Attorney General for 1961. The syllabus of that Opinion shows the holding as follows:

"The position of clerk of a board of education of a local school district, elected pursuant to Section 3313.22, Revised Code, is incompatible with the position of member of the board of health of a general health district, appointed

pursuant to Sections 3709.02, 3709.03 and 3709.04, Revised Code, as the duty of the board of health under Section 3709.22, Revised Code, to inspect schools in the district, creates a conflict of interest between such positions."

Perhaps of even closer application is Opinion No. 200, Opinions of the Attorney General for 1923, in which the Attorney General stated:

"The offices of member of District Board of Health and of County Commissioner are incompatible and cannot be held by the same person."

I am, therefore, of the opinion and you are so advised that the office of county commissioner is not compatible with the office of part-time health commissioner of a city health district.