

**OPINION NO. 81-079**

**Syllabus:**

If it is physically possible for one person to hold both positions and if the holding of both positions is not prohibited by local law, the positions of Brunswick city planning commission member and board of health member are compatible.

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**To: Gregory W. Happ, Medina County Pros. Atty., Medina, Ohio**  
**By: William J. Brown, Attorney General, December 4, 1981**

I have before me your request for my opinion in response to the following question:

Does a conflict of interest or incompatibility arise between the position of a member of the City Planning Commission of the Charter City of Brunswick with a member of the Board of Health of a Medina County Combined General Health District?

In 1979 Op. Att'y Gen. No. 79-III, I set forth the seven questions which must be considered in any compatibility analysis. Those seven questions read as follows:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically [im]possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

In order for the positions at issue to be compatible, each of the seven questions must be answered in the negative. An affirmative answer to even one of the seven questions compels a conclusion that the positions are incompatible.

R.C. 124.57, the subject of the first question, prohibits a classified civil servant from taking part in certain types of political activity. Neither the position of city planning commission member nor that of board of health member is a classified employment within the meaning of R.C. 124.57. Consequently, R.C. 124.57 does not apply to either of the positions at issue and the first question may be answered in the negative.

The second question concerns the limiting effect of the empowering statutes governing either position. An examination of the relevant Revised Code sections indicates that the statutes governing a city planning commission, and those governing boards of health, do not limit the scope of possible outside employment. See, e.g., R.C. Chapter 713; R.C. Chapter 3707. On the contrary, R.C. 713.01 expressly states that "[a]ny member of a city or village planning commission. . .except as otherwise provided in its charter, may hold any other public office. . . ." Thus, the second question may also be answered in the negative.

The third question asks whether one position is subordinate to or a check upon the other. I have been unable to discover any way in which a member of a city planning commission would be subordinate to or a check upon a member of a board of health. The respective bodies operate independently of one another in the performance of their statutory duties and neither one has supervisory power over the other. Consequently, the third question may be answered in the negative.

The fifth question concerns the potential for a conflict of interest between the two positions. The duties of the city planning commission, as set forth in the Revised Code and the charter and codified ordinances for the City of Brunswick, involve regulating the use of land and the location and dimensions of the buildings thereon. See, e.g., R.C. 713.02 ("[t]he planning commission. . .shall make plans and maps of the whole or any portion of the municipal corporation"); R.C. 713.04 ("the legislative authority of a municipal corporation may authorize the planning commission to control the height, design and location of buildings"). A board of health is charged with preserving the health and safety of its citizens. See, e.g.,

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<sup>1</sup>A combined general health district has the same powers as a general health district. R.C. 3709.07.

R.C. 3707.01 ("[t]he board of health. . .shall abate and remove all nuisances"); R.C. 3707.04 (board of health may impose quarantine); R.C. 3707.26 ("board of health. . .shall inspect the sanitary condition of all schools and school buildings within its jurisdiction. . .").

I have been able to locate only one area in which the duties and interests of both a board of health member and a city planning commission member would be involved. This area concerns the authority of a board of health to regulate potential nuisances. Specifically, R.C. 3707.01 provides that:

The board of health of a city or general health district shall abate and remove all nuisances within its jurisdiction. It may, by order, compel the owners, agents, assignees, occupants, or tenants of any lot, property, building, or structure to abate and remove any nuisance therein, and prosecute such persons for neglect or refusal to obey such orders. Except in cities having a building department, or otherwise exercising the power to regulate the erection of buildings, the board may regulate the location, construction, and repair of water closets, privies, cesspools, sinks, plumbing, and drains. In cities having such departments or exercising such power, the legislative authority, by ordinance, shall prescribe such rules and regulations as are approved by the board and shall provide for their enforcement.

The board may regulate the location, construction, and repair of yards, pens, and stables, and the use, emptying, and cleaning of such yards, pens, and stables and of water closets, privies, cesspools, sinks, plumbing, drains, or other places where offensive or dangerous substances or liquids are or may accumulate.

When a building, erection, excavation, premises, business, pursuit, matter, or thing, or the sewerage, drainage, plumbing, or ventilation thereof is, in the opinion of the board, in a condition dangerous to life or health, and when a building or structure is occupied or rented for living or business purposes and sanitary plumbing and sewerage are feasible and necessary, but neglected or refused, the board may declare it a public nuisance and order it to be removed, abated, suspended, altered, or otherwise improved or purified by the owner, agent, or other person having control thereof or responsible for such condition, and may prosecute him for the refusal or neglect to obey such order. The board may, by its officers and employees, remove, abate, suspend, alter, or otherwise improve or purify such nuisance and certify the costs and expense thereof to the county auditor, to be assessed against the property and thereby made a lien upon it and collected as other taxes.

Thus, a board of health has the authority to regulate the location of "yards, pens, and stables" and to order or otherwise arrange for the removal or improvement of buildings which are "dangerous to life or health" or structures which are unsanitary. See also R.C. 3707.02; 1980 Op. Att'y Gen. No. 80-089. As was previously noted, the city planning commission also has authority concerning the location of structures on land within the city and, pursuant to R.C. 713.02, the commission shall make recommendations concerning the "removal [and] relocation. . .of. . .buildings." Thus, both the city planning commission and the board of health have authority which relates to the location and use of yards, pens and stables, and the removal of buildings, and the potential for a conflict in the exercise of this authority does exist.

The fact that there is the potential for a conflict of interest does not, however, always render two positions incompatible. Rather, a further inquiry into the immediacy of the conflict must be made. "[W]here possible conflicts are remote and speculative, the common law incompatibility or conflict of interest rules are not violated." 1979 Op. Att'y Gen. No. 79-111. It is my opinion that the potential conflict in this instance is remote and speculative. It is readily apparent that a city planning commission and a board of health will not be dealing with

either the subject of "yards, pens, and stables" or the removal of buildings on a daily basis. Moreover, with regard to the removal of buildings, the city planning commission may only make recommendations concerning removal while the board of health may actually order or undertake the demolition. I note also that in those instances in which either of these subjects might arise for consideration before both boards, it would be possible for the individual in question to withdraw from the discussion, permitting the issue to be resolved by the remainder of the board or commission members. Because the potential conflict is remote and speculative, question five may also be answered in the negative.<sup>2</sup>

Questions four and six, concerning physical impossibility and local charter and ordinance provisions, are issues which have traditionally been left to the discretion of local officials in the belief that these individuals are more familiar with the subject matter and, therefore, better equipped to resolve these issues. Thus, I am assuming for the purposes of this opinion that questions four and six will, after consideration by your office, also receive negative answers.

The effect of federal, state and local departmental regulations is the subject of question seven. I am not aware of any such regulation which would prevent one individual from holding the positions in question. Consequently, question seven may also be answered in the negative.

As the above discussion indicates, the seven questions which form the basic compatibility analysis have been answered in the negative. Therefore, it is my opinion, and you are advised, that if it is physically possible for one person to hold both positions and if the holding of both positions is not prohibited by local law, the positions of Brunswick city planning commission member and board of health member are compatible.

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<sup>2</sup>If a conflict of interest should arise, the individual holding both positions must, of course, withdraw from the decision-making process. See 1981 Op. Att'y Gen. No. 81-010.