

**Note from the Attorney General's Office:**

1964 Op. Att'y Gen. No. 64-882 was overruled by  
2009 Op. Att'y Gen. No. 2009-005.

## OPINION NO. 882

**Syllabus:**

A member of a governing board of a community improvement corporation, designated as the agent of one or more political subdivisions, holds a public office as that term is used in Sections 731.02 and 731.12, Revised Code, and therefore a councilman may not become a member of the governing board.

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**To: George E. Wilson, Director of Department of Development, Columbus, Ohio**

**By: William B. Saxbe, Attorney General, February 19, 1964**

Your request for my opinion reads as follows:

"I would like an opinion rendered in connection with the legality of having councilmen serve on the Boards of Community Improvement Corporations.

"The fifth line of Section A, Section 1724.03, of the Ohio Revised Code reads: 'Not less than two-fifths of the governing board of any community improvement corporation designated as the agency of one or more political subdivisions shall be composed of appointed or elected officials of such political subdivisions.' The City Solicitor of Lorain, Ohio, has ruled that this is in conflict with other State statutes, inasmuch as there is a conflict of interest.

"Since a number of Community Improvement Corporations are presently being formed, an opinion is urgently needed."

The pertinent provision of Section 1724.03, (A) Revised Code, is as follows:

"\* \* \* Not less than two-fifths of

the governing board of any community improvement corporation designated as the agency of one or more political subdivisions shall be composed of appointed or elected officers of such political subdivisions, provided that at least one officer from each political subdivision shall be a member of the governing board.  
\* \* \*"  
(Emphasis added)

As your specific inquiry is directed to the legality of having councilmen serve on the Boards of Community Improvement Corporations, which are designated as the agency of one or more political subdivisions, I shall refer to Sections 731.02 and 731.12, Revised Code, which are as follows:

"Members of the legislative authority at large shall have resided in their respective cities, and members from wards shall have resided in their respective wards, for at least one year next preceding their election. Each member of the legislative authority shall be an elector of the city, shall not hold any other public office, except that of notary public or member of the state militia, and shall not be interested in any contract with the city, and no such member may hold employment with said city. A member who ceases to possess any of such qualifications, or removes from his ward, if elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit his office." (Emphasis added)

"Each member of the legislative authority of a village shall have resided in the village one year next preceding his election, and shall be an elector of the village. No member of the legislative authority shall hold any other public office, except that of notary public or member of the state militia, or be interested in any contract with the village, and no such member may hold employment with said village. Any member who ceases to possess any of such qualifications or who removes from the village shall forfeit his office." (Emphasis added)

There is no case in point but the term "public office" has been defined so that it would include membership on the board of a community improvement corporation designated as the agent of one or more political subdivisions. The fact that the corporation is to serve as the agent of the subdivision compels me to conclude that the office is so clothed with public character and responsibilities as to come within the following definition of "public office":

"The term, 'public office,' imports an office wherein certain independent pub-

lic duties, a part of the sovereignty of the state, are appointed to it by law, to be exercised by the incumbent by virtue of his election or appointment to the office, and not as a mere employee, subject to the direction and control of someone else."

(State ex rel., Scarl v. Small, 103 App. 214, 3 O. O. (2d) 276, 145 N.E. (2d) 200.)

In addition, I refer to the case of State ex rel., Tilden v. Harbourt, 70 Ohio App. 417, at page 420, wherein the Court stated the following:

"We believe in Ohio, with respect to city councilmen, the question as to the incompatibility of offices is not one as to whether the offices are incompatible in the light of the various definitions, for the statute provides that all public offices and employment, other than that of notary public or militiman, is incompatible with that of councilman."

Judicial decisions and opinions of the Attorney General have generally concluded that councilmen are prohibited from serving in other public capacities and have substantiated the above conclusion. See State ex rel., Attorney General v. Craig, 69 Ohio St. 236, 69 N.E. 228, which concluded that a member of the council is ineligible to appointment as a member of the board of health. State ex rel., Attorney General v. McMillan, 15 C.C. 163, 8 C.D. 380, which held that a member of the council is ineligible to the office of a member of the board of education. Opinion No. 803, Opinions of the Attorney General for 1951, concluded that a councilman is prohibited from serving as a member of a recreation board appointed pursuant to General Code, Section 4065-3 (Revised Code, Section 755.14).

Therefore, it is my opinion and you are hereby advised that a member of a governing board of a community improvement corporation, designated as the agent of one or more political subdivisions, holds a public office as that term is used in Sections 731.02 and 731.12, Revised Code, and therefore a councilman may not become a member of the governing board.