

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

2007 Op. Att'y Gen. No. 2007-020 was questioned by  
2014 Op. Att'y Gen. No. 2014-016.

**OPINION NO. 2007-020****Syllabus:**

The positions of county commissioner and member of the board of trustees of a community college district composed of nine members are incompatible.

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**To: Charles E. Coulson, Lake County Prosecuting Attorney, Painesville, Ohio**  
**By: Marc Dann, Attorney General, July 18, 2007**

You have requested an opinion concerning the propriety of a county commissioner serving on the board of trustees of a community college district composed

of nine members<sup>1</sup> and the authority of a board of county commissioners to appoint one of its members to the board of trustees of a community college district. Specifically, you wish to know the following:

1. Are the positions of county commissioner and member of the board of trustees of a community college district composed of nine members compatible?
2. If the positions of county commissioner and member of the board of trustees of a community college district are compatible, may the board of county commissioners appoint one of its members to the board of trustees of the community college district?
3. If the positions of county commissioner and member of the board of trustees of a community college district are compatible, may the board of county commissioners appoint one of its members to the board of trustees of the community college district when the commissioner to be appointed abstains from voting on his appointment to the board of trustees of the community college?

For the reason that follows, the positions of county commissioner and member of the board of trustees of a community college district composed of nine members are incompatible.

It is well established that a public officer is disqualified from serving on a board or commission to which he makes appointments, unless a statute authorizes the officer to hold the other position. *See State ex rel. Louthan v. Taylor*, 12 Ohio St. 130, 134 (1861); 2006 Op. Att’y Gen. No. 2006-015 at 2-121; 2005 Op. Att’y Gen. No. 2005-016 at 2-157 and 2-158; 2001 Op. Att’y Gen. No. 2001-034 at 2-204; 1998 Op. Att’y Gen. No. 98-009 at 2-51; 1996 Op. Att’y Gen. No. 96-022 at 2-78; 1984 Op. Att’y Gen. No. 84-059 at 2-194; 1983 Op. Att’y Gen. No. 83-070 at 2-289; 1979 Op. Att’y Gen. No. 79-086 at 2-277; 1947 Op. Att’y Gen. No. 1526, p. 23, at 24; 1936 Op. Att’y Gen. No. 5408, vol. I, p. 482, at 483; 1936 Op. Att’y Gen. No. 5114, vol. I, p. 71, at 75; 1935 Op. Att’y Gen. No. 3865, vol. I, p. 67, at 68. This general rule serves to avoid conflict of interest situations that arise when an officer is responsible for supervising his own actions in another public position and is consistent with the common law compatibility principle that prohibits a person from holding two public positions simultaneously when one is subordinate to, or a check upon, the other. 1994 Op. Att’y Gen. No. 94-062 at 2-303.

Under R.C. 3354.05, a board of county commissioners appoints persons to

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<sup>1</sup> Except for the Sinclair Community College District, a board of trustees of a community college district has nine members. *Compare* R.C. 3354.05(A) (“[w]ithin ninety days after a community college district has been declared to be established pursuant to [R.C. 3354.02-.04], nine persons ... shall be appointed as a board of trustees of the community college district”) *with* R.C. 3354.25(A) (the board of trustees of the Sinclair Community College District consists of eleven members).

the board of trustees of the community college district that includes the territory of the county:<sup>2</sup>

(A) Within ninety days after a community college district has been declared to be established pursuant to [R.C. 3354.02-.04], nine persons, all of whom shall be residents of the district, shall be appointed as a board of trustees of the community college district. *Six trustees shall be appointed by the board of county commissioners or boards of county commissioners of such district* and three trustees shall be appointed by the governor, with the advice and consent of the senate. At the time of the initial meeting of the trustees a drawing shall be held to determine the initial term of each appointee, one trustee to serve for a term ending two years after the date upon which the community college district had been declared established, three for terms ending three years after that date, three for terms ending four years after that date, and two for terms ending five years after that date.

(B) At the expiration of each of the three terms appointed by the governor, and thereafter, the governor shall make appointments, with the advice and consent of the senate. *At the expiration of each of the remaining six terms, and thereafter, the board of county commissioners or boards of county commissioners shall make appointments.* Except as provided in division (C) of this section, the successive terms of trustees shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. (Emphasis added.)

A county commissioner thus is responsible for appointing persons to the board of trustees of the community college district that includes the territory of his county.<sup>3</sup>

No statute authorizes a board of county commissioners, directly or indirectly, to appoint one of its members to the board of trustees of the community college district. It follows, under the general rule, that a county commissioner may not serve on the board of trustees of the community college district. *Cf.* 1984 Op. Att’y Gen. No. 84-059 at 2-194 (“because the township trustees select the members of the board of trustees of the regional water and sewer district, the township trustees may not themselves serve as members of such board”); 1947 Op. Att’y Gen. No. 1526, p. 23 (because a township trustee is disqualified from serving on a board to which he makes appointments, it follows that a township trustee may not serve on a township memorial board to which he makes appointments).

<sup>2</sup> R.C. 3354.02(D) provides that, “[n]o county shall be included in the territory of more than one community college district.”

<sup>3</sup> A county commissioner must be a resident of the county that he serves. *See* Ohio Const. art. XV, § 4; R.C. 3503.01; *see also* R.C. 305.01. Similarly, a member of the board of trustees of a community college district must be a resident of the district. R.C. 3354.05(A). In light of these residency requirements, a county commissioner may only serve on the board of trustees of a community college district that includes the territory of the commissioner’s county.

We note that it is possible to argue that, insofar as three of the nine members of a board of trustees of a community college district are appointed by the Governor with the advice and consent of the Senate, rather than the board of county commissioners, the general rule would not apply if a county commissioner were to be appointed to the board of trustees by the Governor with the advice and consent of the Senate. *See* R.C. 3354.05(A) (three members of a board of trustees of a community college district are appointed by the Governor with the advice and consent of the Senate, while six members are appointed by the board of county commissioners). The argument is that in such a situation the Governor, rather than the board of county commissioners, is responsible for supervising the activities the commissioner undertakes as a trustee. *See* R.C. 3.04 (“[w]hen not otherwise provided by law, an officer who holds his office by appointment of the governor with the advice and consent of the senate may be removed from office by the governor with the advice and consent of the senate, if it is found that such officer is inefficient or derelict in the discharge of his duties, if the ethics commission created by [R.C. 102.05] has found, based upon a preponderance of the evidence, that the facts alleged in a complaint under [R.C. 102.06] alleging a violation by the officer constitutes a violation of [R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43], if the officer fails to file or falsely files a statement required by [R.C. 102.02], or if it is found that he has used his office corruptly”); *cf.* 1994 Op. Att’y Gen. No. 94-062 at 2-303 (a veterans service commission that appoints persons to expend proceeds of an allowance granted under R.C. 5901.02-.15 “has an implied responsibility to oversee the activities of those persons, to make certain that the persons continue to be ‘suitable’ for their functions, and to ensure that the procedures established by R.C. 5901.14 are properly followed”).

This argument, however, discounts the fact that a county commissioner appointed to the board of trustees of a community college district by the Governor with the advice and consent of the Senate has influence over the members of the board of trustees appointed by the board of county commissioners and that such influence makes the position of county commissioner a check upon the board of trustees of a community college district. Like the Governor, a board of county commissioners is responsible for supervising the activities of the members of a board of trustees of a community college district that it appoints. *See* 1994 Op. Att’y Gen. No. 94-062 at 2-303. Moreover, a board of county commissioners has the authority to remove the members of a board of trustees of a community college district that the board appoints. *See State ex rel. Minor v. Eschen*, 74 Ohio St. 3d 134, 139, 656 N.E.2d 940 (1995) (“the power of removal is regarded as incident to the power of appointment”); 2004 Op. Att’y Gen. No. 2004-001 at 2-3 (the power of a board to appoint persons to another board includes the concomitant power to remove persons from that board); 1992 Op. Att’y Gen. No. 92-017 at 2-60 (“the law generally recognizes that, absent constitutional or statutory provisions specifying otherwise, the power to remove an appointee from a public office or position is implied by the power to make such appointment”).

As indicated above, only three of the nine members of a board of trustees of a community college district are appointed by the Governor with the advice and

consent of the Senate. The remaining six members are appointed by the board of county commissioners. Thus, given that the majority of the members of a board of trustees of a community college district are under the supervision of, and subject to removal by, the board of county commissioners, it is readily apparent that the board of county commissioners acts as a check upon the board of trustees of a community college district. Accordingly, a county commissioner may not serve on the board of trustees of the community college district even when the commissioner is appointed to the board of trustees by the Governor with the advice and consent of the Senate.

Because we have determined that the positions of county commissioner and member of the board of trustees of a community college district composed of nine members are incompatible, it is unnecessary for us to address your second and third questions.

In conclusion, it is my opinion, and you are hereby advised that the positions of county commissioner and member of the board of trustees of a community college district composed of nine members are incompatible.