

OPINION NO. 77-034

Syllabus:

Pursuant to R.C. 713.21 the position of director for a regional planning commission and the position of county administrator in the same county are not by operation of law incompatible.

To: Lowell S. Petersen, Ottawa County Pros. Atty., Port Clinton, Ohio
By: William J. Brown, Attorney General, June 22, 1977

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

". . .whether or not there exists a conflict of interest or other illegality if the same person simultaneously holds the position of Director for the County Regional Planning Commission (Revised Code Section 713.21 et seq.) and that of County Administrator (Revised Code Section 305.29) in the same County."

As one of my predecessors pointed out, in 1965 Op. Att'y Gen. No. 65-69, in nearly every case involving the question of compatibility of public offices, a specific common law test is applied. The test is set forth in State, ex rel. Attorney General v. Gebert, 12 Ohio C.C.R. (n.s.) 274, 275 (1909) 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."

In 1965 Op. Att'y Gen. No. 65-69, in which consideration was given to R.C. 713.21, on the basis of this common law analysis of compatibility, it was determined that the office of member of regional planning commission was incompatible with the offices of township trustee, member of municipal planning commission and county commissioner, when such offices are within the territory of the regional planning commission.

In 1965, however, R.C. 713.21 was amended by Am. S.B. No. 285, effective 10-6-75, to include the following sentence:

"Any member of a regional planning commission may hold any other public office and may serve as a member of a city, village, and a county planning commission, except as otherwise provided in the charter of any city or village."

This amendment, therefore, negated the conclusion reached in

1965 Op. Att'y Gen. No. 65-69, dated April 23, 1965. Thus, it was the manifest intent of the General Assembly that despite any conclusion of incompatibility arising from the common law analysis, a member of a regional planning commission may also hold any other public office or any of the other positions enumerated in the above revision. This statutory provision would appear to reflect a policy of encouraging intergovernmental cooperation.

While no specific statutory provision is made for the appointment of a director of a regional planning commission, the commission's authority to hire a director may be inferred from R.C. 713.21, which provides in pertinent part:

" . . . [t]he regional planning commission may employ engineers, accountants, consultants, and employees as are necessary . . .

" . . . The commission may make agreements with other agencies, public or private, for the temporary transfer or joint use of staff employees, and may contract for professional or consultant services for or from other governmental and private agencies and persons."

As an employee of a regional planning commission, the director may exercise only those powers and duties conferred upon him by the commission. It is clear that the director cannot exercise any greater power than that granted to the members of a regional planning commission. It follows that since the members of the regional planning commission are specifically authorized to hold other public office or serve on other planning commissions, a director employed by such a commission may also so serve. Thus a director of a regional planning commission, pursuant to R.C. 713.21, is not prohibited by operation of law from holding other public offices.

A regional planning commission would, of course, be free to require that its director refrain from serving any other planning commission or subdivision while in its employ. Your question, however, assumes a situation where the commission in question has not seen fit to impose such a requirement.

Based, therefore, upon the express provisions of R.C. 713.21, it is my conclusion that a director employed by a regional planning commission is not prohibited by law from simultaneously serving as a county administrator. Due to the provisions of R.C. 713.21, the traditional tests of incompatibility contained in State ex rel. Attorney General v. Gebert, supra, is inapplicable and I express no opinion as to whether the positions in question here are incompatible under the Gebert analysis or under the analysis set forth in a number of opinions summarized in 1975 Op. Att'y Gen. No. 75-009, which evaluate whether one person is in effect competing for a division of funds when he serves two subdivisions.

It is therefore my conclusion that application of R.C. 713.21 extends to the position of director of a

regional planning commission. Thus, despite any possible common law incompatibility or competition for allocated funds, the statute governs the situation in question. As a result, the director of the regional planning commission may properly serve simultaneously as a county administrator, unless the regional planning commission or the board of county commissioners specify otherwise.

In specific answer to your question it is my opinion, and you are so advised that pursuant to R.C. 713.21 the position of director for a regional planning commission and the position of county administrator in the same county are not by operation of law incompatible.