January 30, 2009

The Honorable Daniel G. Padden
Guernsey County Prosecuting Attorney
139 West Eighth Street
P.O. Box 640
Cambridge, Ohio 43725-0640

SYLLABUS: 2009-005

A person may serve simultaneously as a member of the legislative authority of a city and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city. (1964 Op. Att'y Gen. No. 882, p. 2-87, overruled.)

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

January 30, 2009

OPINION NO. 2009-005

The Honorable Daniel G. Padden
Guernsey County Prosecuting Attorney
139 West Eighth Street
P.O. Box 640
Cambridge, Ohio 43725-0640

Dear Prosecutor Padden:

You have requested an opinion whether a person may serve simultaneously in the positions of member of the legislative authority of a city and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city.[1] For the reasons that follow, these two positions are compatible.

Compatibility Test

The following five questions are used for determining whether a person may hold a public and private position concurrently:[2]

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[1] R.C. 1724.10 authorizes the legislative authority of a city to designate a community improvement corporation as the agency of the city for the industrial, commercial, distribution, and research development in the city when the legislative authority has determined that the policy of the city is to promote the health, safety, morals, and general welfare of its inhabitants through the designation of the community improvement corporation as such agency. *See* R.C. 165.20.

[2] A community improvement corporation is a nonprofit corporation organized in the manner provided in R.C. 1702.04 and R.C. 1724.01-.09 for the sole purpose of advancing,

1. Is the public position a classified employment within the terms of R.C. 124.57?

2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?

3. Is there an impermissible conflict of interest between the two positions?

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encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area. R.C. 1724.01; *see also* R.C. 1724.08; R.C. 1724.10(A). Moreover, pursuant to R.C. 1724.10(A), membership on the governing board of a community improvement corporation does not constitute the holding of a public office or employment. *See generally* 2008 Op. Att'y Gen. No. 2008-035, slip op. at 6 (a community improvement corporation "is not a political subdivision"); 2003 Op. Att'y Gen. No. 2003-037 at 2-308 ("[t]he Ohio Supreme Court has examined a [community improvement corporation] and has determined that it is a nonprofit corporation separate from any political subdivision that designates the [community improvement corporation] as its agency or instrumentality"); 2000 Op. Att'y Gen. No. 2000-037 (syllabus) ("[f]or purposes of a lease of real property by a county to a community improvement corporation pursuant to R.C. 1724.10, a community improvement corporation is not a governmental subdivision under R.C. 307.09(B)"). Thus, the position of member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of a city for the industrial, commercial, distribution, and research development in the city is not a public office or employment when applying the compatibility test.

We are aware that a community improvement corporation's status as a private corporation is not determinative of its status as a "public office" for purposes of some statutory schemes. *See* 2006 Op. Att'y Gen. No. 2006-037 at 2-342. *See generally* 1987 Op. Att'y Gen. No. 87-024 at 2-167 ("[n]otwithstanding the statement in R.C. 1724.10(A) that membership on the governing board of a community improvement corporation does not constitute the holding of a public office or employment, I conclude that when such a corporation has been designated as the agency of a political subdivision pursuant to R.C. 1724.10, a member of the governing board of the corporation is an 'employee' of the political subdivision for purposes of R.C. Chapter 2744"); 1979 Op. Att'y Gen. No. 79-061 (syllabus, paragraph two) ("[t]he governing board of a community improvement corporation that has been designated an agency of a county, a municipal corporation, or any combination thereof, pursuant to R.C. 1724.10, constitutes a public body for the purposes of R.C. 121.22"). Nevertheless, because the language of R.C. 1724.10(A) is rather obviously intended to eliminate problems regarding conflicts of interest and incompatibility of office, *see* 1987 Op. Att'y Gen. No. 87-024 at 2-167, reliance upon the language stating that membership on the governing board of a community improvement corporation does not constitute the holding of a public office or employment is appropriate in the context of compatibility of public positions. 1979 Op. Att'y Gen. No. 79-061 at 2-206.

4. Are there local charter provisions, resolutions, or ordinances which are controlling?

5. Is there a federal, state, or local departmental regulation applicable?

See 2005 Op. Att'y Gen. No. 2005-023 at 2-227.

The fourth and fifth questions ask about the applicability of charter provisions, resolutions, or ordinances, and federal, state, and local regulations. No federal or state regulation prohibits a person from serving simultaneously as a member of the legislative authority of a city and member of the governing board of a community improvement corporation.[3] Whether an

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[3] We note that 5 U.S.C.S. § 1502(a)(3) provides that "[a] State or local officer or employee may not … be a candidate for elective office." *Accord* 5 C.F.R. § 151.121(c). 5 U.S.C.S. § 1501(4), in turn, defines a "state or local officer or employee" as

> an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or Federal agency, but does not include … an individual who exercises no functions in connection with that activity….

Accord 5 C.F.R. § 151.101(d).

Thus, pursuant to 5 U.S.C.S. § 1502(a)(3), if a local officer or employee is employed principally "in connection with an activity which is financed in whole or in part by loans or grants made by the United States or Federal agency," and exercises some function in connection with that activity, the local officer or employee may not be a candidate for elective office. *But see generally* 5 U.S.C.S. § 1502(c) (5 U.S.C.S. § 1502(a)(3) "does not apply to—(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor; (2) the mayor of a city; (3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil-service system; or (4) an individual holding elective office"); 5 U.S.C.S. § 1503 (5 U.S.C.S. § 1502(a)(3) "does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected"); 5 C.F.R. § 151.111(a) (a state or local officer or employee may be a candidate "for office in a nonpartisan election"); 5 C.F.R. § 151.122 (listing instances when 5 C.F.R. § 151.121(c), which prohibits a state or local officer or employee from being a candidate for elective public office in a partisan election, does not apply).

Whether the prohibition set forth in 5 U.S.C.S. § 1502(a)(3) applies in your situation to the position of member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of a city for the industrial,

applicable local charter provision, resolution, ordinance, or departmental regulation bars a person from holding these two positions at the same time is a question for local officials to answer. *See id.* at 2-228. For the purpose of this opinion, it is assumed that no local charter provision, resolution, ordinance, or departmental regulation prohibits such dual service.

Discussion of R.C. 124.57

The first question asks whether the public position is a classified employment within the terms of R.C. 124.57, which prohibits an officer or employee in the classified service of a city from participating in certain political activities as follows:

> No officer or employee in the classified service of the … cities … shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political party or for any candidate for public office; … nor shall any officer or employee in the classified service of the … cities … be an officer in any political organization or take part in politics other than to vote as the officer or employee pleases and to express freely political opinions.

R.C. 124.57(A); *accord* 2 Ohio Admin. Code 123:1-46-02(A).

This statute has been interpreted as prohibiting an officer or employee in the classified service of a city from seeking election or appointment to, or holding, a partisan political office,[4] or engaging in other partisan political activities. *See* rule 123:1-46-02(C)(1), (6); 2007 Op. Att'y Gen. No. 2007-037 at 2-379. *See generally Heidtman v. City of Shaker Heights*, 163 Ohio St. 109, 126 N.E.2d 138 (1955) (syllabus, paragraph two) (the term "politics," as used in what is now R.C. 124.57, "must be defined as politics in its narrower partisan sense"). *See generally also Gray v. City of Toledo*, 323 F. Supp. 1281, 1286 (N.D. Ohio 1971) (upholding the constitutionality of R.C. 124.57 by using the narrow interpretation of "politics" adopted in *Heidtman*).

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commercial, distribution, and research development in the city is a question that must be addressed by local officials or, ultimately, the courts. *See generally* 1999 Op. Att'y Gen. No. 99-007 at 2-55 (the Attorney General is not empowered to provide authoritative interpretations of federal law); 1983 Op. Att'y Gen. No. 83-057 at 2-232 (the Attorney General does not serve as a fact-finding body). For guidance in answering this question, local officials should contact the United States Office for Special Counsel, which is the federal agency charged with administering 5 U.S.C.S. § 1502(a)(3). *See* 5 U.S.C.S. § 1504.

[4] Language in a city charter, ordinance, resolution, or collective bargaining agreement may declare that an officer or employee in the classified service of the city may seek election or appointment to, and serve in, a partisan political office. 2006 Op. Att'y Gen. No. 2006-005 at 2-47 n.6; 1991 Op. Att'y Gen. No. 91-065 (syllabus, paragraph one).

As an elected officer, a member of the legislative authority of a city is in the city's unclassified service, rather than its classified service. *See* R.C. 124.11(A)(1); R.C. 731.01. R.C. 124.57 thus does not apply to the position of member of the legislative authority of a city,[5] and so does not prohibit such a member from serving on the governing board of a community improvement corporation.

Constitutional Provisions and Statutes Prohibiting the Holding of a Public Position

The second question asks whether a constitutional provision or statute prohibits a person from serving in both positions at the same time. R.C. 731.02 states that a member of the legislative authority of a 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 of the legislative authority of a city who violates any of these provisions of R.C. 731.02 "shall forthwith forfeit" his office. R.C. 731.02.

As you have noted, this Attorney General Opinion is not the first to address the meaning of R.C. 731.02. An earlier opinion—1964 Op. Att'y Gen. No. 882, p. 2-87—considered R.C. 731.02, as well as R.C. 731.12,[6] while addressing the legality of a member of the legislative authority of a municipal corporation[7] serving on the governing board of a community improvement corporation designated pursuant to R.C. 1724.03 (now R.C. 1724.10, *see* 1965 Ohio Laws 2016 (Am. H.B. 941, eff. Nov. 1, 1965)) as the agency of the municipal corporation

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[5] While R.C. 124.57's prohibition does not apply to a member of the legislative authority of a city, a city charter provision may limit or prohibit such a member from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities. *See State ex rel. Vana v. Maple Heights City Council*, 54 Ohio St. 3d 91, 561 N.E.2d 909 (1990); *see also Painter v. Graley*, 70 Ohio St. 3d 377, 639 N.E.2d 51 (1994); 1994 Op. Att'y Gen. No. 94-087 at 2-431. We will assume, for the purpose of this opinion, that the city has no such charter provision.

[6] R.C. 731.12 provides, in part:

> No member of the legislative authority [of a village] shall hold any other public office, be interested in any contract with the village, or hold employment with said village, except that such member may be a notary public, a member of the state militia, or a volunteer fireman of said village, provided that such member shall not receive any compensation for his services as a volunteer fireman of the village in addition to his regular compensation as a member of the legislative authority.

[7] As used in the Revised Code, the term "municipal corporation" includes cities and villages. Ohio Const. art. XVIII, § 1; R.C. 703.01.

for the industrial, commercial, distribution, and research development in the municipal corporation,[8] and concluded that these two statutes prohibited such dual service. In reaching its conclusion, the opinion reasoned as follows:

> 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":
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> > "The term, 'public office,' imports an office wherein certain independent public 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.)
> >
> > ….
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> Therefore, … 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 [R.C. 731.02 and R.C. 731.12], and therefore a [member of the legislative authority of a municipal corporation] may not become a member of the governing board.

1964 Op. Att'y Gen. No. 882, p. 2-87, at 2-88 and 2-89.

Thus, 1964 Op. Att'y Gen. No. 882, p. 2-87 determined that R.C. 731.02 and R.C. 731.12 preclude a person from serving simultaneously as a member of the legislative authority of a municipal corporation and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.03 (now R.C. 1724.10) as the agency of the municipal corporation for the industrial, commercial, distribution, and research development in the municipal corporation.

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[8] In 1964, R.C. 1724.03(A) required that "[n]ot 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." 1963 Ohio Laws 571 (Am. S.B. 360, eff. Oct. 10, 1963). Similar language now appears in R.C. 1724.10(A). *See* 1965 Ohio Laws 2016 (Am. H.B. 941, eff. Nov. 1, 1965) (repealing R.C. 1724.03 and enacting R.C. 1724.10).

After the issuance of 1964 Op. Att'y Gen. No. 882, p. 2-87, the General Assembly amended the provisions of law pertaining to membership on the governing board of a community improvement corporation. R.C. 1724.10(A) now explicitly provides, in part, as follows:

> Membership on the governing board of a community improvement corporation *does not constitute the holding of a public office or employment within the meaning of [R.C. 731.02 and R.C. 731.12]* or any other section of the Revised Code. Membership on such governing boards *shall not constitute an interest, either direct or indirect, in a contract or expenditure of money by any municipal corporation,* township, county, or other political subdivision. (Emphasis added.)

See 1965 Ohio Laws 574 (Am. H.B. 941, eff. Nov. 1, 1965).

R.C. 1724.10(A) also states that the governing board of a community improvement corporation that has been designated by the city as the agency of the city for the industrial, commercial, distribution, and research development in the city may "be composed of … members of municipal legislative authorities." *See* 1965 Ohio Laws 573 (Am. H.B. 941, eff. Nov. 1, 1965). Finally, R.C. 1724.10(A) mandates that no member of the governing board of a community improvement corporation "shall be disqualified from holding any public office or employment, nor shall such member forfeit any such office or employment, by reason of his membership on the governing board … notwithstanding any law to the contrary." *See* 1965 Ohio Laws 574 (Am. H.B. 941, eff. Nov. 1, 1965).

The plain language of R.C. 1724.10(A) thus clearly and unequivocally provides that neither R.C. 731.02 nor R.C. 731.12 prohibits a person from serving simultaneously as a member of the legislative authority of a municipal corporation and member of the governing board of a community improvement corporation that has been designated as the agency of the municipal corporation for the industrial, commercial, distribution, and research development in the municipal corporation. Because the General Assembly has determined legislatively that R.C. 731.02 and R.C. 731.12 do not prohibit such dual service, we overrule 1964 Op. Att'y Gen. No. 882, p. 2-87. *See generally* 1987 Op. Att'y Gen. No. 87-024 at 2-167 (the reference in R.C. 1724.10(A) to R.C. 731.02 and R.C. 731.12 is clearly intended to permit officials of municipal corporations to serve both their municipalities and appropriate community improvement corporations); 1979 Op. Att'y Gen. No. 79-061 at 2-206 (the reference in R.C. 1724.10(A) to R.C. 731.02 and R.C. 731.12, and other sections of the Revised Code, "is rather obviously intended to eliminate problems regarding conflicts of interest and incompatibility of office").

Accordingly, in light of the language of R.C. 1724.10(A), R.C. 731.02 does not bar a person from serving concurrently as a member of the legislative authority of a city and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city. *See generally* 2003 Op. Att'y Gen. No. 2003-007 at 2-43 n.4 ("because R.C. 505.49(B)(2) explicitly authorizes a board of township trustees that has created a township police district to designate the police officers of the district as police

constables, a person may hold both of these positions at the same time"); 1977 Op. Att'y Gen. No. 77-034 at 2-123 (it is apparent from the language of R.C. 713.21 that "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 [R.C. 713.21]").

R.C. 165.13 also prohibits a member of the legislative authority of a city who serves on the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city from being

> an officer, director, stock holder, employee, or owner of any interest in a proprietorship, corporation, joint enterprise, partnership, or other association which is the lessee of a project or the trustee, paying agency, or depository of funds under an indenture of mortgage or trust agreement securing bonds issued under authority of [R.C. 165.03], or a supplier of materials or a contractor or subcontractor for construction of a project.

See generally R.C. 165.01(H) (for purposes of R.C. Chapter 165, "'[p]roject' means real or personal property, or both, including undivided and other interests therein, acquired by gift or purchase, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, by an issuer,[9] or by others in whole or in part from the proceeds of a loan made by an issuer, for industry, commerce, distribution, or research and located within the boundaries of the issuer" (footnote added)).

In your particular situation, however, you have not indicated that the person in question holds one of the positions enumerated in R.C. 165.13. We will presume, therefore, that R.C. 165.13 does not apply.

We are not aware of any other provision of law pertaining to membership on legislative authorities of cities and governing boards of community improvement corporations that would bar a person from serving simultaneously as a member of the legislative authority of a city and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city. Hence, the second question may be answered in the negative.

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[9] The term "issuer," as used in R.C. Chapter 165, includes a city of this state that has, pursuant to R.C. 1724.10, "designated a community improvement corporation as its agency for industrial, commercial, distribution, and research development and for which a plan has been prepared by such community improvement corporation and confirmed by its issuing authority." R.C. 165.01(D). *See generally* R.C. 165.01(E) (for purposes of R.C. Chapter 165, the "issuing authority" of a city is its legislative authority).

Conflicts of Interest

The third and final question asks whether there are impermissible conflicts of interest between the two positions.[10] Prior Attorney General opinions have stated that conflicts of interest occur when a person who holds two positions at the same time is subject to divided loyalties, conflicting duties, or to the temptation to act other than in the public's best interest. 2005 Op. Att'y Gen. No. 2005-023 at 2-231.

The determination whether conflicts of interest exist between two positions requires us to first study the powers, duties, and responsibilities of the respective positions. *Id.* If this study discloses any conflicts of interest, we must then determine the immediacy of the conflicts of interest to evaluate whether the conflicts of interest may be eliminated entirely or sufficiently avoided. *Id.* Factors used in making this determination include, but are not limited to, the probability of the conflicts occurring, the ability of the person to remove himself from any conflicts that may occur (should they arise), whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters. *Id.*

We will first examine the powers, duties, and responsibilities of the legislative authority of a city. The legislative authority of a city is primarily responsible for exercising the legislative power of the city, *see* R.C. 731.01; R.C. 731.05, managing and controlling the property and finances of the city, *see* R.C. 715.01; R.C. 723.01; R.C. 731.47, and providing for the safety of persons and property in the city, *see* R.C. 9.60; R.C. 715.05; R.C. 737.021; R.C. 737.04; R.C. 737.051; R.C. 737.21; R.C. 737.28; R.C. 737.37. In order to discharge its responsibilities, the

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[10] Pursuant to R.C. 102.08, the Ohio Ethics Commission, rather than the Attorney General, advises on the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. We will, therefore, refrain from interpreting and applying these provisions to your particular situation by way of a formal opinion. *See* 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three). Questions concerning the interpretation and application of these provisions in the situation in which a person serves simultaneously as a member of the legislative authority of a city and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city should instead be directed to the Ohio Ethics Commission. *See, e.g.*, Ohio Ethics Comm'n, Advisory Op. No. 88-005, slip op. at 3 ("R.C. 1724.10 does not exempt a city official from R.C. Chapter 102., so that the city officials are still subject to the prohibitions of R.C. 102.03(D)"); Ohio Ethics Comm'n, Advisory Op. No. 81-005 (syllabus) (R.C. 2921.42 "prohibits a city official or employee from serving as an officer or board member of an undesignated community improvement corporation established by the city"); Ohio Ethics Comm'n, Advisory Op. No. 80-002 (syllabus) (R.C. 102.04(C) "prohibits a city council member from receiving compensation from a community improvement corporation designated by the city with which he serves").

legislative authority of a city may pass ordinances and resolutions, *see* R.C. 715.01; R.C. 715.03; R.C. 731.17, acquire, hold, possess, and dispose of city property, *see* R.C. 715.01; R.C. 715.011; R.C. 723.121, invest city moneys, *see* R.C. 135.14; R.C. 731.56, and establish police and fire departments, *see* R.C. 715.05; R.C. 737.21. The legislative authority of a city also serves as the city's taxing authority for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law), *see* R.C. 133.01(NN)(2); R.C. 5705.01(C), and, in this capacity, is responsible for issuing securities for the purpose of providing funds with which to pay one or more final judgments rendered against the city, *see* R.C. 133.14, issuing securities for the purpose of paying all or any portion of the costs of any permanent improvement that the city is authorized to acquire, improve, or construct, *see* R.C. 133.15, preparing the city's annual tax budget, *see* R.C. 5705.28, and levying taxes and assessments on real property within the city, *see* R.C. 133.56; R.C. 5705.03; R.C. 5705.07; R.C. 5705.19.

Meanwhile, a community improvement corporation is a nonprofit corporation organized under the provisions of R.C. Chapter 1724 and subject to the general nonprofit corporation provisions of R.C. Chapter 1702 to the extent that they are not inconsistent with R.C. Chapter 1724. R.C. 1724.01; R.C. 1724.08. Such a corporation is organized to advance, encourage, and promote the industrial, economic, commercial, and civic development of a community or area. R.C. 1724.01; R.C. 1724.10.

In furtherance of these objectives, the governing board of a community improvement corporation may borrow money, issue bonds and notes, make loans, acquire or dispose of real and personal property, acquire assets or interests of businesses and assume, undertake, or pay their obligations and liabilities, and acquire real estate for the purpose of constructing businesses or disposing of the real estate to others for such construction. R.C. 1724.02. The governing board may also acquire, construct, operate, sell, or lease industrial plants or business establishments and may acquire, hold, or dispose of stocks, bonds, notes, and other securities in private businesses. *Id*.

In addition, the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of a city for the industrial, commercial, distribution, and research development in such city may enter into an agreement with the city to provide the corporation with one or more of the following types of authority: (A) authority to prepare a plan for industrial, commercial, distribution, and research development within the city and participate as the agency of the city in carrying out the plan; (B) authority to sell or lease lands or interests in lands owned by the city and not needed for purposes of the city; and (C) authority to acquire lands or interests in lands from the city or others and use them for purposes that promote the welfare of the people of the city, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities to benefit the people of the city and provide additional opportunities for their gainful employment. R.C. 1724.10.

A review of the powers, duties, and responsibilities of the respective positions discloses that the legislative authority of a city may enter into agreements with, make contributions of

public moneys and property to, and finance projects to implement a plan for industrial, commercial, distribution, and research development prepared by, a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city. *See* R.C. Chapter 165; R.C. Chapter 761; R.C. 1724.10; 2003 Op. Att'y Gen. No. 2003-037; 1991 Op. Att'y Gen. No. 91-071; *see also* R.C. 122.45. If a member of the legislative authority of a city who serves on the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city were required to deliberate, discuss, negotiate, or vote on agreements with, the making of contributions of public moneys and property to, or the financing of projects to implement a plan for industrial, commercial, distribution, and research development prepared by, the community improvement corporation, it might be difficult for the member of the legislative authority to perform his duties and exercise his discretion in a completely objective and disinterested manner because of his position on the governing board of the community improvement corporation.

Although conflicts of interest may exist between the positions of member of a city legislative authority and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city, the General Assembly has legislatively sanctioned a person serving in both positions at the same time. R.C. 1724.10(A) provides, in part, 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* mayors, *members of municipal legislative authorities*, members of boards of township trustees, members of boards of county commissioners, or any other 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. Membership on the governing board of a community improvement corporation does not constitute the holding of a public office or employment within the meaning of [R.C. 731.02 and R.C. 731.12] or any other section of the Revised Code. *Membership on such governing boards shall not constitute an interest, either direct or indirect, in a contract or expenditure of money by any municipal corporation*, township, county, or other political subdivision. *No member of such governing boards shall be disqualified from holding any public office or employment, nor shall such member forfeit any such office or employment, by reason of his membership on the governing board of a community improvement corporation notwithstanding any law to the contrary*. (Emphasis added.)

As explained in 1987 Op. Att'y Gen. No. 87-024 at 2-167:

> The reference in R.C. 1724.10(A) to R.C. 731.02 and [R.C.] 731.12 is clearly intended to permit officials of municipal corporations to serve both their municipalities and appropriate community improvement corporations. Related references in R.C. 1724.10(A) to interests in contracts and disqualification from holding public office make it clear that the intent of R.C. 1724.10 was to address concerns about compatibility and conflicts of interest.

See 1979 Op. Att'y Gen. No. 79-061 at 2-206 (R.C. 1724.10(A) "is rather obviously intended to eliminate problems regarding conflicts of interest and incompatibility of office").

Thus, pursuant to R.C. 1724.10(A), the General Assembly has authorized a person to serve simultaneously as a member of a city legislative authority and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city even though conflicts of interest may exist between the two positions. *See* 1987 Op. Att'y Gen. No. 87-024 at 2-167; 1979 Op. Att'y Gen. No. 79-061 at 2-206. *See generally* 1990 Op. Att'y Gen. No. 90-037 (under R.C. 505.011, the General Assembly has implicitly sanctioned a township trustee serving as a member of a private fire company with which the township contracts notwithstanding that R.C. 511.13 prohibits a township trustee from having an interest in a contract entered into by the board of township trustees and the private fire company); 1977 Op. Att'y Gen. No. 77-034 at 2-123 (in light of the language of R.C. 713.21, it is apparent that "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 [R.C. 713.21]"). *See generally also* 1999 Op. Att'y Gen. No. 99-023 at 2-156 n.7 (stating that "[w]hen the General Assembly has intended that an individual be permitted to participate in two different capacities that might have prohibited interests, it has expressly so stated"); 1991 Op. Att'y Gen. No. 91-007 at 2-37 ("[t]he Ohio Ethics Commission has, in essence, concluded that an individual does not have a prohibited personal interest in a contract by virtue of serving a nonprofit corporation when his service to the nonprofit corporation is performed in his official capacity, as a formal representative of a governmental entity—for then his interest in the nonprofit corporation is public and official, rather than private; he represents and serves the governmental entity and not his own interests. This conclusion is eminently reasonable and a valid statement of general ethical principles governing participation by public servants in the affairs of nonprofit corporations, and I embrace it wholeheartedly" (citing Ohio Ethics Comm'n, Advisory Op. No. 88-005)). Accordingly, the positions of member of a city legislative authority and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city are not rendered incompatible because of the possibility of conflicts of interest between the two positions.

Conclusion

In sum, it is my opinion, and you are hereby advised that a person may serve simultaneously as a member of the legislative authority of a city and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial, commercial, distribution, and research development in the city. (1964 Op. Att'y Gen. No. 882, p. 2-87, overruled.)

Respectfully,

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Ohio Attorney General