

OPINION NO. 2004-051**Syllabus:**

1. A full-time fireman employed by the City of Tiffin and holding the rank of captain may also serve as a Seneca County commissioner, so long as a charter provision or ordinance of the city permits a person employed as a fireman to participate in partisan politics, and it is physically possible for the person to fully and effectively carry out the duties and responsibilities of each of these positions.
2. A full-time fireman employed by the City of Tiffin and holding the rank of captain may also serve as a Seneca County commissioner, but in his capacity as a county commissioner he may not participate in any deliberations, discussions, negotiations, or votes concerning an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund; tax levies or bond issues for additional funding when the city has placed such a levy or bond issue on the ballot; a tax levy or bond issue for providing ambulance service or emergency medical service; a contract between the county and city; annexation or detachment proceedings involving the city; or matters that relate to the provision of ambulance service, emergency medical service, or nonemergency patient transport service.
3. A full-time fireman employed by the City of Tiffin and holding the rank of captain may also serve as a Seneca County commissioner, but in his capacity as a city fireman he may not be responsible for examining or investigating county buildings or structures for fire

and safety hazards or taking such action as is necessary to ensure the safety of the public in county buildings and structures.

To: Ken Egbert, Jr., Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Jim Petro, Attorney General, December 29, 2004

You have requested an opinion whether a full-time fireman for the City of Tiffin¹ and holding the rank of captain may also serve as a Seneca County commissioner. Based on the following, it is our opinion that a fireman employed by the City of Tiffin and holding the rank of captain may also serve as a Seneca County commissioner, so long as a charter provision or ordinance of the city permits a person employed as a fireman to participate in partisan politics, and it is physically possible for the person to fully and effectively carry out the duties and responsibilities of each of these positions.

As a county commissioner, he may not participate in any deliberations, discussions, negotiations, or votes concerning an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund; tax levies or bond issues for additional funding when the city has placed such a levy or bond issue on the ballot; a tax levy or bond issue for providing ambulance service or emergency medical service; a contract between the county and city; annexation or detachment proceedings involving the city; or matters that relate to the provision of ambulance service, emergency medical service, or nonemergency patient transport service.

In addition, as a city fireman, he may not be responsible for examining or investigating county buildings or structures for fire and safety hazards or taking such action as is necessary to ensure the safety of the public in county buildings and structures.

Compatibility Test

The following seven questions are used to determine whether a person may hold two public positions simultaneously:

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 employment in another public position or the holding of another public office?

¹Pursuant to Ohio Const. art. XVIII, § 2, the General Assembly may enact general laws to provide for the incorporation and government of municipal corporations, which are cities and villages, Ohio Const. art. XVIII, § 1; R.C. 703.01. If a city should prefer a form of government different from those statutorily authorized by the General Assembly, the city may frame and adopt a charter for its government pursuant to Ohio Const. art. XVIII, § 7, *see* note five, *infra*, and may, subject to the provisions of Ohio Const. art. XVIII, § 3, *see* note five, *infra*, exercise under such charter all powers of local self-government. 1954 Op. Att'y Gen. No. 4244, p. 475. General laws enacted by the General Assembly thus prescribe several forms of government for noncharter cities, while the form of government for cities that adopt a charter is established by the charter. *See* 1989 Op. Att'y Gen. No. 89-050 at 2-213 and 2-214. The City of Tiffin has adopted a charter for its government.

3. Is one position subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2003 Op. Att'y Gen. No. 2003-041 at 2-335 and 2-336. *See generally* 2 Ohio Admin. Code 123:1-46-02(F) (“[s]ervice in an appointed or elected position is prohibited when such position is subordinate to or in any way a check upon a position concurrently occupied by a classified or unclassified employee, or when it is physically impossible for one person to discharge the duties of both positions, or if some specific constitutional or statutory bar exists prohibiting a person from serving [in] both positions”).

Questions six and seven ask about the applicability of charter provisions, resolutions, or ordinances, and federal, state, and local regulations. A person is not prohibited by a state or federal regulation from serving simultaneously in the positions of city fireman and county commissioner. Additionally, whether there is an applicable local charter provision, resolution, ordinance, or departmental regulation which prohibits a person from concurrently holding these two positions is a question for county and city officials to answer. For the purpose of this opinion, it is assumed that no such local charter provision, resolution, ordinance, or departmental regulation exists.²

²A collective bargaining agreement entered into by the city and the employees of its fire department pursuant to R.C. Chapter 4117 may have a provision that might prohibit an employee of the fire department in a given instance from holding another public position. *See generally* R.C. 4117.03(A)(4) (city employees are authorized to bargain collectively with the city “to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements”); R.C. 4117.08(A) (“[a]ll matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section”); R.C. 4117.10(A) (“[a]n agreement between a public employer and an exclusive representative entered into pursuant to [R.C. Chapter 4117] governs the wages, hours, and terms and conditions of public employment covered by the agreement”). Whether the provisions of a collective bargaining agreement apply in a given instance so as to prohibit an employee of the city’s fire department from holding the position of county commissioner must be determined on a case-by-case basis by the parties to the agreement. *See generally* 1991 Op. Att’y Gen. No. 91-065 at 2-311 (it is not within the authority of the Attorney General “to render an opinion as to the meaning of language in a specific collective bargaining agreement”).

Discussion of R.C. 124.57

Question one asks whether either of the positions is a classified employment within the terms of R.C. 124.57. This statute prohibits officers and employees in the classified service of the state, or of a county, city, city school district, or civil service township, from taking part in a variety of activities that occur as part of the regular political process and are partisan in nature.³ Specifically, "R.C. 124.57 does the following: it prohibits an officer or employee in the classified service from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service." 2003 Op. Att'y Gen. No. 2003-041 at 2-336 (footnote omitted); *accord* 2001 Op. Att'y Gen. No. 2001-034 at 2-203; *see* rule 123:1-46-02(C).

We must now determine whether either a city fireman or county commissioner is an officer or employee in the classified service so as to be prohibited from taking part in partisan political activities. The position of county commissioner is filled by popular vote, R.C. 305.01, and as such is in the unclassified service of the county. *See* R.C. 124.11(A)(1) (the unclassified service of a county includes "[a]ll officers elected by popular vote or persons appointed to fill vacancies in such offices"). R.C. 124.57 thus does not prohibit a county commissioner from engaging in partisan political activity. *See generally* rule 123:1-46-02(E) ("[e]mployees in the unclassified service, who serve at the pleasure of the appointing authority and are not subject to competitive examination, are not prohibited from engaging in political activity unless specifically precluded by federal or state constitutional or statutory provisions").

A city fireman is in the classified service of the city. *See* R.C. 124.11(B) (the classified service shall comprise all persons in the employ of a city not specifically included in the unclassified service); rule 123:1-46-02(A)(1) (same); *see also* R.C. 124.43 (separate examinations shall be given and separate eligibility lists maintained by municipal civil service commissions for original appointments to and promotions in fire departments in cities); R.C. 124.45 ("[v]acancies in positions above the rank of regular fireman in a fire department shall be filled by competitive promotional examination, and promotions shall be by successive ranks as provided in this section and [R.C. 124.46-.49]"). *See generally* R.C. 124.11(A)(3) (R.C. Chapter 124 "does not exempt the ... chiefs of fire departments of cities ... from the competitive classified service"); R.C. 737.11 (the "fire departments in every city shall be maintained under the civil service system"). Thus, at first glance, it would seem that R.C. 124.57 prohibits a city fireman, as an employee in the classified service of a charter city,

³R.C. 124.57 reads, in relevant part:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state 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 state, the several counties, cities, and city school districts of the state, or the civil service townships of the state 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. (Emphasis added.)

from running for or holding a partisan political office such as county commissioner,⁴ or engaging in other partisan political activities.

A charter city's home rule powers, however, can be sufficient to overcome the prohibition in R.C. 124.57. See generally *State ex rel. Canada v. Phillips*, 168 Ohio St. 191, 151 N.E.2d 722 (1958) (syllabus, paragraph two) (the appointment of city police officers represents the exercise of a power of local self-government within the meaning of Ohio Const. art. XVIII, §§ 3 and 7,⁵ and as such the "[p]rovisions of a city charter, for appointment to a position in the competitive classified service of the city from among the three candidates highest on the eligible list, authorize appointment as a deputy inspector of police of the candidate second highest on such list, notwithstanding that a state statute ([R.C. 143.34 (now R.C. 124.44)]) requires, with respect to a vacancy in a position above the rank of patrolman in a police department, that the candidate highest on the eligible list be appointed"); *Harbarger v. Ballard*, 53 Ohio App. 2d 281, 283-84, 373 N.E.2d 390 (Summit County 1977) ("a city ... has home rule powers under [Ohio Const. art. XVIII, § 3] in matters affecting civil service and public employee situations. It is obvious from this authority that [a city] is not bound by the state law"). Thus, for example, if there is a provision in the city charter that conflicts with that statute, the charter provision prevails.⁶ See *State ex rel. Lightfield v. Village of Indian Hill*, 69 Ohio St. 3d 441, 442, 633 N.E.2d 524 (1994); *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d 106, 108-09, 524 N.E.2d 447 (1988).

Similarly, city ordinances, as an exercise of the city's home rule powers, can supersede conflicting state statutes. See, e.g., *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Sidney*, 91 Ohio St. 3d 399, 402, 746 N.E.2d 597 (2001) ("[a]n ordinance adopted by a municipality pursuant to its constitutional home-rule authority regarding military leave of its employees prevails over conflicting state law"); *Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma*, 61 Ohio St. 2d 375, 378, 402 N.E.2d 519 (1980) ("[i]t is axiomatic that an ordinance, similar to the one at bar [regarding military pay], if enacted by a chartered municipality, would prevail over the state law [R.C. 5923.05] irrespective of any conflict"). In a charter city, though, such ordinances are capable of superseding state statutes only if the charter authorizes the passage of such ordinances. *State ex rel. Lightfield v. Village of Indian Hill*, 69 Ohio St. 3d at 442, 633 N.E.2d 524; *State ex rel. Bednar v. City of North Canton*, 69 Ohio St. 3d 278, 280-281, 631 N.E.2d 621 (1994); *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d at 109-10, 524 N.E.2d 447. Thus, in a charter city

⁴County commissioners are elected in partisan elections. See R.C. 305.01; R.C. 3505.04; R.C. 3513.01; R.C. 3513.251-.256. See generally 1993 Op. Att'y Gen. No. 93-052 at 2-251 ("a person seeking party nomination as a candidate for the position of county commissioner would do so at the primary election held in an even-numbered year").

⁵Ohio Const. art. XVIII, § 3 provides that, "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const. art. XVIII, § 7 states that, "[a]ny municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

⁶In order for a city charter provision to supersede a state civil service law, the "conflicts must be in the 'express ... language' of the charter and not by mere inference." *State ex rel. Lightfield v. Village of Indian Hill*, 69 Ohio St. 3d 441, 442, 633 N.E.2d 524 (1994) (quoting *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d 106, 110, 524 N.E.2d 447 (1988)); accord *State ex rel. Bednar v. City of North Canton*, 69 Ohio St. 3d 278, 280, 631 N.E.2d 621 (1994).

such as Tiffin, the prohibition in R.C. 124.57 applies unless there is either a charter provision that supersedes it or a charter provision authorizing a municipal ordinance, and an accompanying ordinance, that supersedes it. *See, e.g., Hudak v. Cleveland Civil Serv. Comm'n*, 44 Ohio App. 3d 15, 17, 540 N.E.2d 741 (Cuyahoga County 1988) (“[t]he city’s charter generally controls its civil service practices, pursuant to its home rule powers. Hence, Section 140 of the Cleveland Charter governs this dispute, rather than R.C. 124.57 which governs classified civil service employees outside charter municipalities” (citations omitted)), *appeal dismissed*, 37 Ohio St. 3d 704, 531 N.E.2d 1316 (1988).

You have informed us that in this particular situation there is a city ordinance that permits a city fireman to become a candidate “for any public office, other than a municipal office of the City of Tiffin.” Administrative Code of the Codified Ordinances of the City of Tiffin § 149.07(a). The existence of this ordinance raises two important questions that need to be addressed by the concerned local officials. The first is whether the City of Tiffin’s charter authorizes the passage of this ordinance so as to supersede R.C. 124.57. Because you have not provided us with a copy of the city’s charter, we are unable to make this determination.

The second question is whether the ordinance permits a city fireman to hold the office of county commissioner or other partisan political office after he is elected. The ordinance in question explicitly permits a city fireman to be a *candidate* for a partisan political office, but is silent with regard to whether a city fireman is permitted to *serve* in that office while a fireman. It is, therefore, not clear whether the ordinance excepts a city fireman from disciplinary action, which may include dismissal from city employment, once he begins serving in a partisan political office, and such a determination is beyond the scope of this opinion. *See generally* 1983 Op. Att’y Gen. No. 83-095 (syllabus, paragraph two) (“[a]n appointing authority has the authority to take action pursuant to R.C. 124.34 to remove or otherwise discipline a classified employee who is engaged in partisan political activity in violation of R.C. 124.57, but such authority is discretionary not mandatory in nature”). *See generally also* rule 123:1-46-02(D) (“[a]n employee in the classified service who engages in any of the [partisan political] activities listed in paragraphs (C)(1) to (C)(13) of this rule is subject to removal from his or her position in the classified service. The appointing authority may initiate such removal action in accordance with the procedures in [R.C. 124.34]. The director [of administrative services] may also institute an investigation or action in case of a violation”).

If this ordinance may reasonably be read as permitting such dual service by the city’s firemen, then the fireman is not prohibited by R.C. 124.57 from serving simultaneously as a county commissioner.

Statutes Prohibiting the Holding of Another Public Position

Question two asks whether the empowering statutes of either position limit a person from being employed in another public position or holding another public office. Also, a constitutional provision may prohibit a person from holding two public positions at the same time.

Except as provided in R.C. 124.57, discussed above, no constitutional provision or statute prohibits a person from serving simultaneously in the positions of city fireman and county commissioner.

Subordination and Control

Question three asks whether one position is subordinate to, or in any way a check upon, the other. A county commissioner is elected by, and responsible to, the county's citizens. *See* R.C. 305.01. A city fireman is employed by the city, and is under the control and supervision of the city's fire chief. *See* R.C. 124.42; R.C. 715.05; R.C. 737.08; R.C. 737.09; R.C. 737.12. A city fireman and county commissioner thus hold positions with different governmental entities and are not subordinate to each other. The positions also operate independently of each other, and neither is required to assign duties to, or supervise, the other. Accordingly, neither position is subordinate to, or in any way a check upon, the other.

Physical Ability to Hold and Serve in Both Positions

Question four asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that is best resolved by the interested local officials since they may more precisely determine the time constraints and demands imposed upon the person as a city fireman and county commissioner.⁷ 2003 Op. Att'y Gen. No. 2003-041 at 2-339. *See generally State ex rel. Gretick v. Jeffrey*, 12 Ohio St. 3d 55, 465 N.E.2d 412 (1984) (a person may hold the positions of county commissioner and full-time principal at a high school where there is no proof that the person is physically unable to perform the duties of both positions).

It should be noted, however, that a county commissioner, as an elected county officer, is required to perform duties imposed by statute and, where the nature of such duties requires the commissioner to be present at a particular time or place, or act in a particular manner, the commissioner must be able to do so. *See, e.g.*, R.C. 305.06(A) ("[t]he board of county commissioners shall conduct at least fifty regular sessions each year, at an office provided for the board in the county seat or at another location as provided in [R.C. 305.06(B)]. Each of these sessions shall be conducted at a specific time fixed in advance"); R.C. 305.07(A) ("[s]pecial sessions of the board of county commissioners may be held as often as the commissioners deem it necessary").

Similarly, as stated in your letter for an opinion, a full-time city fireman who holds the rank of captain is expected to be on duty during his scheduled shift hours unless he has made other arrangements. *See* note seven, *supra*. A captain in the fire department may also be required to attend meetings or training activities that do not occur when he is on duty. The presence of a captain during his shift and at meetings or training activities is especially important because the duties and responsibilities of a captain are greater than those of a regular, unranked fireman. Additionally, a city fireman may be required to respond to emergency fire and rescue calls during his off-duty hours.⁸

⁷In written correspondence, the chief of the Tiffin Fire/Rescue Division has stated that the city fireman "will be able to meet his commitments as Commissioner by taking time off or through the use of shift substitution." The chief further elaborated that the fireman "will be able to meet his Commissioner commitments with no adverse effect and no cost to the City."

⁸From the information you have provided in your letter it does not appear that the city firemen are on duty at all times. Rather, these firemen may be called upon during their off-duty hours if they are needed in an emergency situation. Thus, city firemen have off-duty time which they may use as they please. *See* note seven, *supra*. *Compare In re Compatibility of County Dog Warden and Village Marshal*, 19 Ohio Misc. 2d 12, 14, 482 N.E.2d 1355 (C.P. Van Wert County 1984) ("the Board of Commissioners of Van Wert County has seen fit to establish a twenty-four hour on-call workday for its dog warden; thus one in the position of

Thus, in order to serve simultaneously in these two positions, a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner. 2003 Op. Att'y Gen. No. 2003-041 at 2-339. This means that there may not be a direct conflict between the times when the person is needed to perform duties on behalf of the city and the county.⁹ *Id.*

Conflicts of Interest

The fifth and final question asks whether there is a conflict of interest between the two positions.¹⁰ A person may not hold two public positions concurrently if the "responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to influences which may prevent his decisions from being completely objective." 1980 Op. Att'y Gen. No. 80-035 at 2-149.

We must now review the powers, duties, and responsibilities of a county commissioner and city fireman so as to determine whether there are any conflicts of interest between these two positions. If our review discloses conflicts, we must then determine whether the conflicts may be avoided or eliminated entirely, thus allowing the person to hold both positions at the same time. The 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, 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. 2003 Op. Att'y Gen. No. 2003-041 at 2-340.

Let us first review the powers, duties, and responsibilities of a county commissioner. County commissioners are responsible for governing the county. *See generally* R.C. Chapter 307 (setting forth the general powers and duties of a board of county commissioners). These responsibilities include, among other things, procuring group insurance for county employees, R.C. 305.171, compounding or releasing debts, judgments, fines, or amercements due the county and for the use thereof, R.C. 305.26, providing offices for county officers, R.C. 307.01; R.C. 307.02, entering into contracts on behalf of the county, *see, e.g.*, R.C. 9.60; R.C. 307.15-.153; R.C. 307.671-.674, and providing ambulance, emergency medical, and non-emergency patient transport services, *see, e.g.*, R.C. 9.60; R.C. 307.05; R.C. 307.052.

dog warden has no off-duty time in which to perform the duties of village marshal"), *with* 2004 Op. Att'y Gen. No. 2004-019 at 2-158 n.6 ("the fact that an administrative assistant [for the county treasurer] must be available 24 hours a day to resolve alarm and safe problems should not make it physically impossible for one person to perform the duties of administrative assistant and member of the board of elections").

⁹If a city fireman is required to perform his duties as a county commissioner during the time he is required to perform his duties as a fireman, he will have to take approved vacation or personal leave or leave without pay for the time he is absent from his duties as a fireman.

¹⁰The Ohio Ethics Commission is authorized under R.C. 102.08 to issue advisory opinions regarding the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. In light of this grant of authority, we will refrain from interpreting and applying these provisions by way of a formal opinion of the Attorney General. 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three). It is, therefore, recommended that you consult with the Ohio Ethics Commission for advice concerning the application of these provisions in your particular situation.

A board of county commissioners is also responsible for preparing the county's budget and handling other fiscal matters. *See, e.g.*, R.C. 135.33(C) (awards the county's active moneys to eligible institutions); R.C. 135.341 (establishes county investment policy). A board of county commissioners is made the taxing authority of the county for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law). *See* R.C. 133.01(NN)(1); R.C. 5705.01(C). In this capacity, a board of county commissioners issues securities for the purpose of providing funds with which to pay one or more final judgments rendered against the county, R.C. 133.14, issues securities for the purpose of paying all or any portion of the costs of any permanent improvement that the county is authorized to acquire, improve, or construct, R.C. 133.15, prepares the county's annual tax budget, R.C. 5705.28, and levies taxes, *see, e.g.*, R.C. 133.25; R.C. 5705.03; R.C. 5705.07; R.C. 5705.19.

We will now turn to the duties and responsibilities performed by a city fireman. The primary duty of a city fireman is to protect the lives and property of people in case of fire or other emergency situations. *See* R.C. 737.11; R.C. 737.21; *see also* R.C. 737.24; R.C. 3737.80. In addition, you have informed us that the city fireman in question is required to have a current, valid certificate issued under R.C. 4765.30 to practice as an emergency medical technician-basic or "EMT-basic." *See* Administrative Code of the Codified Ordinances of the City of Tiffin § 143.04. As an EMT-basic, the fireman "may operate, or be responsible for operation of, an ambulance and may provide emergency medical services to patients." R.C. 4765.37(B). Also, pursuant to R.C. 4765.37(B), the fireman may provide the following services:

In an emergency, an EMT-basic may determine the nature and extent of illness or injury and establish priority for required emergency medical services. An EMT-basic may render emergency medical services such as opening and maintaining an airway, giving positive pressure ventilation, cardiac resuscitation, electrical interventions with automated defibrillators to support or correct the cardiac function and other methods determined by the [State Board of Emergency Medical Services], controlling of hemorrhage, treatment of shock, immobilization of fractures, bandaging, assisting in childbirth, management of mentally disturbed patients, initial care of poison and burn patients, and determining triage of adult and pediatric trauma victims. Where patients must in an emergency be extricated from entrapment, an EMT-basic may assess the extent of injury and render all possible emergency medical services and protection to the entrapped patient; provide light rescue services if an ambulance has not been accompanied by a specialized unit; and after extrication, provide additional care in sorting of the injured in accordance with standard emergency procedures.

See 11B Ohio Admin. Code 4765-15-04 (setting out the emergency medical services that an EMT-basic may perform).

The city fireman in question also is required to be certified as a fire safety inspector.¹¹ *See* Administrative Code of the Codified Ordinances of the City of Tiffin § 143.04. *See generally* R.C. 3737.34 (certification of persons to serve as fire safety inspectors); 11B Ohio Admin. Code 4765-11-09(A) (same). *See generally also* R.C. 4765.55 (fire safety inspector

¹¹As used in R.C. Chapter 3737, which concerns fire safety, a "[f]ire safety inspector" is a "person who is a member of the civil service, as defined in [R.C. 124.01], or who is employed by or voluntarily serves a village or township, and who examines the property of another person for the purpose of identifying fire safety hazards." R.C. 3737.01(D).

training programs); [2004-2005 Monthly Record] Ohio Admin. Code Chapter 4765-11 at 751-56 (same). As a fire safety inspector, he may examine or investigate a building or other structure for violations of the state fire code and for dangerous conditions, and, if necessary, may issue a citation in order to abate or remedy violations of the state fire code or dangerous conditions. *See* R.C. 3737.01(D); R.C. 3737.14; R.C. 3737.41; R.C. 3737.42; 3 Ohio Admin. Code 1301:7-1-03; 3 Ohio Admin. Code 1301:7-1-05; *see also* R.C. 737.27; R.C. 3750.16; R.C. 3781.03. In order to protect the public, he may order the immediate evacuation of a building or other structure that is unsafe, file a complaint to restrain any condition or practices in any building or upon any premises which violate the state fire code and are such that a fire or explosion hazard exists which could reasonably be expected to cause death or serious physical harm, and request the Attorney General or another legal officer to bring an action for an injunction or any other appropriate proceedings against any person violating or threatening to violate any provision of the state fire code or any order issued pursuant thereto in the court of common pleas in the county where the violation is occurring or is threatened to occur. R.C. 3737.44-.46.

Our review of the powers, duties, and responsibilities of the respective positions discloses that there are several potential conflicts of interest. First, a conflict exists because of the competition for tax moneys generated within the ten-mill limitation.¹² Except as provided in R.C. 5705.28(B) and R.C. 5705.281,¹³ the taxing authority of the county and each city therein is required to prepare, adopt, and submit an annual tax budget to the county budget commission. R.C. 5705.28(A); *see also* R.C. 5705.29-.32. *See generally* R.C. 5705.01(A) (defining both a county and city as a "subdivision" for purposes of R.C. Chapter 5705 (tax levy law)). For purposes of R.C. Chapter 5705, the board of county commissioners is the taxing authority for the county. R.C. 5705.01(C). A county commissioner thus is required to participate in the preparation and adoption of the county's annual tax budget.

Revisions and adjustments made by the county budget commission directly affect the amount of tax money generated within the ten-mill limitation that will be allotted to the county and the cities within the county.¹⁴ Because such revisions and adjustments may affect the county's budget, a county commissioner may appear before the county budget commission to explain the county's financial needs. R.C. 5705.32(E). Accordingly, a county commissioner who is employed as a fireman in a city that competes for tax moneys gener-

¹²Under Ohio Const. art. XII, § 2, no property may be taxed in excess of one percent of its true value in money for all state and local purposes, except when approved by the voters or provided for by a municipal charter. 1999 Op. Att'y Gen. No. 99-015 at 2-115 n.2. This is known as the "ten-mill limitation." 2001 Op. Att'y Gen. No. 2001-019 at 2-107 n.1; *see* R.C. 5705.02; R.C. 5705.03; R.C. 5705.07. For the purpose of paying the current operating expenses of the subdivision, the subdivision's taxing authority is authorized to levy property taxes within the ten-mill limitation. R.C. 5705.03(A); 2001 Op. Att'y Gen. No. 2001-019 at 2-107.

¹³Pursuant to R.C. 5705.28(B)(2)(a), the taxing authority of a taxing unit that does not levy a tax is not required to adopt an annual tax budget under R.C. 5705.28. R.C. 5705.281 authorizes a county budget commission to waive the requirement that the taxing authority of a subdivision adopt an annual tax budget under R.C. 5705.28.

¹⁴After the annual tax budgets are submitted, the county budget commission revises and adjusts the estimate of balances and receipts from all sources for each fund within each subdivision's tax budget, R.C. 5705.32; *see* R.C. 5705.31, and adjusts the levies of each subdivision within the limits of the law, R.C. 5705.31.

ated within the ten-mill limitation might be subject to influences, because of his employment with the city, that could prevent him from making completely objective, disinterested decisions when preparing the county's annual tax budget or explaining it to the county budget commission. *See* 2000 Op. Att'y Gen. No. 2000-025 at 2-171.

A similar conflict of interest also exists because of competition between a county and city for moneys in the undivided local government fund and the undivided local government revenue assistance fund. R.C. 5747.50-.55 and R.C. 5747.61-.63 govern the creation and operation of the undivided local government fund and the undivided local government revenue assistance fund, respectively. Under each of these statutory schemes, moneys may be apportioned to counties and cities. *See* 2000 Op. Att'y Gen. No. 2000-025 at 2-171. *See generally* R.C. 5747.01(Q)(1) (as used in R.C. 5747.50-.55, the term "[s]ubdivision" includes counties and cities); R.C. 5747.62(A) (for purposes of R.C. 5747.62-.63, counties and cities are subdivisions).

R.C. 5747.51 and R.C. 5747.52 set forth the method whereby moneys in the undivided local government fund are allocated to subdivisions. R.C. 5747.62 sets forth the provisions governing the disbursement of moneys from the undivided local government revenue assistance fund. Pursuant to R.C. 5747.51(B) and R.C. 5747.62(B), the county and the cities therein are given the opportunity to have a representative appear before the county budget commission to explain and establish their need for moneys from these funds. A county commissioner thus may appear before the county budget commission to explain the county's need for moneys from the undivided local government fund or the undivided local government revenue assistance fund. In such a situation, a county commissioner who is a fireman in a city within the same county might be subject to influences, because of his employment with the city, that could prevent him from making completely objective and disinterested decisions. *See* 2000 Op. Att'y Gen. No. 2000-025 at 2-171.

An additional taxing and budgetary conflict may also exist because of competition for tax moneys in excess of the ten-mill limitation. As taxing authorities for partially coextensive subdivisions, *see* R.C. 133.01(NN)(1), (2); R.C. 5705.01(C), the board of county commissioners and legislative authority of the city are permitted to place levies on the ballot for taxes in excess of the ten-mill limitation, R.C. 5705.07; *see, e.g.*, R.C. 5705.19, and to submit to the electors bond issues, *see, e.g.*, R.C. 133.18. Where both the county and city contemplate asking the voters for a tax levy or bond issue for additional funding, the person as a county commissioner might find himself subject to divided loyalties. *See* 2004 Op. Att'y Gen. No. 2004-025 at 2-227; 1998 Op. Att'y Gen. No. 98-017 at 2-88; 1988 Op. Att'y Gen. No. 88-011 at 2-43. For example, if the city has authorized a tax levy for additional operating funds, *see* R.C. 5705.07; R.C. 5705.19, a county commissioner who serves as a city fireman might be apprehensive about placing a county levy on the ballot for fear that the city levy may be rejected in favor of the county levy. *See* 2004 Op. Att'y Gen. No. 2004-025 at 2-227; 1998 Op. Att'y Gen. No. 98-017 at 2-88; 1988 Op. Att'y Gen. No. 88-011 at 2-43. "Questions of competing concerns before the electorate may be critical to determining whether or when a board might consider bringing requests for additional taxes before the voters." 1988 Op. Att'y Gen. No. 88-011 at 2-43.

We believe, however, that these conflicts of interest are insufficient to render the positions of county commissioner and city fireman incompatible. A city fireman is not required by statute to prepare the city's annual tax budget or present the budget to the county budget commission. Nor is a city fireman required to determine whether or when to place a city tax levy or bond issue on the ballot. Instead, these responsibilities are conferred upon the legislative authority of the city, as the city's taxing authority, R.C. 133.01(NN)(2);

R.C. 5705.01(C). *See, e.g.*, R.C. 133.18; R.C. 133.25; R.C. 5705.07; R.C. 5705.19. It is also unlikely that the legislative authority will require a city fireman to appear before the county budget commission to explain the city's need for tax money generated within the ten-mill limitation or to explain and establish the city's need for moneys from the undivided local government fund or the undivided local government revenue assistance fund. Because a city fireman is not a member of the city's taxing authority, *see* R.C. 5705.01(C), a city fireman who serves as a county commissioner within the same county will not be required to prepare or explain competing tax budgets to the county budget commission or determine whether or when to place a city tax levy or bond issue on the ballot. A city fireman, therefore, is not subject to impermissible conflicts involving competition for additional tax moneys generated within or in excess of the ten-mill limitation or moneys from the undivided local government fund or the undivided local government revenue assistance fund.

Also, the fact that a county commissioner holds an additional employment with a city that competes with the county for tax moneys generated within or in excess of the ten-mill limitation and moneys from the undivided local government fund and the undivided local government revenue assistance fund is, in and of itself, an insufficient reason to find that the county commissioner is subject to impermissible conflicts of interest. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35; 2000 Op. Att'y Gen. No. 2000-025 at 2-172; 1999 Op. Att'y Gen. No. 99-027 at 2-183. As stated in 2003 Op. Att'y Gen. No. 2003-006 at 2-35, "[i]f this reason were deemed sufficient, a county commissioner would not be permitted to hold any employment or office with a political subdivision that competes with the county for tax moneys generated within [or in excess of] the ten-mill limitation and moneys from the undivided local government fund and the undivided local government revenue assistance fund." *See* 2004 Op. Att'y Gen. No. 2004-025 at 2-228; 2000 Op. Att'y Gen. No. 2000-025 at 2-172; *see also State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d 96, 99, 206 N.E.2d 563 (1965).

Additionally, even though a county commissioner who is a city fireman within the same county is required to prepare the county's annual tax budget, and may be required to explain it to the county budget commission, it is unlikely that the commissioner would use less than his best judgment in carrying out these responsibilities. *See* 2000 Op. Att'y Gen. No. 2000-025 at 2-172. *See generally State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph ten) ("[i]n the absence of evidence to the contrary, public officials, administrative officers, and public authorities, within the limits of the jurisdiction conferred upon them by law, will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully"); 1983 Op. Att'y Gen. No. 83-037 at 2-141 ("I realize that there exists the potential for abuse in a situation such as you describe. However, this office must assume, in the absence of evidence to the contrary, that all parties are acting in good faith, and in accordance with the law"). This is particularly true in light of the fact that while the county and city each prepare and submit a tentative annual tax budget and request moneys from the undivided local government fund and the undivided local government revenue assistance fund, it is the county budget commission that actually allots to the county and city tax proceeds within the ten-mill limitation and moneys from the undivided local government fund and the undivided local government revenue assistance fund. *See* R.C. 5705.31-.32; R.C. 5747.51; R.C. 5747.62; 2003 Op. Att'y Gen. No. 2003-006 at 2-35 and 2-36; 2000 Op. Att'y Gen. No. 2000-025 at 2-172.

Moreover, when a board of county commissioners considers placing a levy on the ballot for taxes in excess of the ten-mill limitation or submitting to the electors a bond issue after the city has authorized a tax levy or bond issue for additional funding, a county commissioner who is employed by the city as a fireman is able to remove himself from any

deliberations, discussions, or votes on the tax levy or bond issue because the board is capable of functioning and performing its statutory duties when one of the commissioners abstains from participating in the matter. *See* 2004 Op. Att'y Gen. No. 2004-025 at 2-228. *See generally State ex rel. Gretick v. Jeffrey*, 12 Ohio St. 3d at 56, 465 N.E.2d 412 (a county commissioner who is a principal at a high school may refrain from voting on a matter involving school property assessments and avoid a conflict of interest); *State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d 47, 48, 212 N.E.2d 604 (1965) (“[i]n the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur”). It is also well established that, in a matter in which a public officer is exposed to influences that may prevent him from making completely objective and disinterested decisions, the officer should refrain from participating in the matter. 2004 Op. Att'y Gen. No. 2004-025 at 2-228; 1994 Op. Att'y Gen. No. 94-079 at 2-394.

Hence, a county commissioner who serves as a city fireman within the same county should abstain from participating in deliberations, discussions, and votes on a tax levy or bond issue for additional funding when the city that employs him as a fireman has already placed such a levy or bond issue on the ballot. *See* 2004 Op. Att'y Gen. No. 2004-025 at 2-228. Furthermore, insofar as you have informed us that the city provides emergency medical service and ambulance service through its fire department, the person, as a county commissioner, should also refrain from participating in deliberations, discussions, and votes on a tax levy or bond issue for providing ambulance service or emergency medical service.¹⁵ *See, e.g.,* R.C. 133.18 (authorizing a board of county commissioners to issue bonds); R.C. 5705.19(U) (authorizing a tax levy in excess of the ten-mill limitation “[f]or providing ambulance service, emergency medical service, or both”). In light of the foregoing, we believe that the potential conflicts of interest that arise from the competition over tax moneys generated within or in excess of the ten-mill limitation and moneys in the undivided local government fund and the undivided local government revenue assistance fund do not render the positions of county commissioner and city fireman within the same county incompatible, provided the person, as county commissioner, does not participate in deliberations, discussions, or votes on tax levies or bond issues for additional funding that occur after the city has placed such a levy or bond issue on the ballot or a tax levy or bond issue for providing ambulance service or emergency medical service. *See generally State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d at 99, 206 N.E.2d 563 (“[t]he law does not punish an officeholder for what he ‘could do’ or where there was a ‘possibility’ or opportunity to commit some wrongful act”).

Another potential conflict of interest may arise because the county budget commission may use an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund in lieu of the method set forth in R.C. 5747.51-.52 or R.C. 5747.62, respectively. Before an alternative method of apportioning either of these funds may be used, the method must be approved by the board of county commissioners. *See* R.C. 5747.53; R.C. 5747.63.

The adoption of an alternative method of disbursing moneys from either of these funds may affect the amount of moneys to be allocated to the city. A board of county commissioners thus could affect the amount of moneys the city will receive from either the undivided local government fund or the undivided local government revenue assistance fund by approving an alternative method for apportioning moneys from these funds under R.C.

¹⁵A board of county commissioners is authorized to operate or contract for the services of an ambulance service organization, emergency medical service organization, or a non-emergency patient transport service organization. *See, e.g.,* R.C. 9.60; R.C. 307.05.

5747.53 or R.C. 5747.63, respectively. In such instances, a county commissioner who is employed as a city fireman within the same county could be subject to influences that might prevent him from making completely objective, disinterested decisions when deliberating, discussing, negotiating, or voting upon an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-36 and 2-37; 2000 Op. Att'y Gen. No. 2000-025 at 2-172.

In our opinion, this conflict can be avoided. There will be few occasions in which a county commissioner will be required to discuss, deliberate, negotiate, or vote upon an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund. 2003 Op. Att'y Gen. No. 2003-006 at 2-37. It is, therefore, unlikely that the county commissioner will be required to discuss, deliberate, negotiate, or vote upon an alternative method of apportioning either of these funds. Further, since such occasions will arise infrequently, a county commissioner should be able to easily remove himself from any deliberations, discussions, negotiations, or votes concerning an alternative method of apportioning either of these funds. *Id.* Also, funding and budgetary matters are not part of the duties of a city fireman, and thus this conflict does not involve a conflict between the primary duties of the two positions. Accordingly, this particular conflict does not prohibit a county commissioner from serving simultaneously as a city fireman within the same county, provided that the commissioner does not participate in any deliberations, discussions, negotiations, or votes regarding an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund. *See id.*; 2000 Op. Att'y Gen. No. 2000-025 at 2-173.

Conflicts of interest may also arise because the county and city may enter into contracts with each other. *See, e.g.*, 9.60 (authorizing a county and city to enter into a contract whereby the county or city provides fire protection to the other); R.C. 307.05 (a county may contract with a city in order to furnish or obtain ambulance, emergency medical, or nonemergency patient transport services); R.C. 307.15 (authorizing a county and city to enter into a contract whereby the county or city is authorized to exercise any power, perform any function, or render any service on behalf of the other); R.C. 307.38 (a board of county commissioners may contract with a city for the administration and enforcement of building regulations); R.C. 307.63 (a board of county commissioners may enter into an agreement with a city whereby the city uses the countywide public safety communications system to dispatch their police officers, firemen, and emergency medical personnel). If a county commissioner who also is a city fireman were required to deliberate, discuss, negotiate, or vote on a contract between the county and city, it might be difficult for the commissioner to perform his duties and exercise his discretion in a completely objective and disinterested manner because of his employment with the city. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-37.

Nonetheless, it is our opinion that these conflicts of interest may also be avoided. No statute mandates that a county and city contract with each other for services, property, or any other reason. Therefore, the occasions requiring a county commissioner to discuss, deliberate, negotiate, or vote on a contract between the county and city should be infrequent.

Even when such a contract is contemplated by a board of county commissioners and the legislative authority of the city, a county commissioner who is employed by the city will be able to remove himself from any deliberations, discussions, negotiations, or votes on the contract because, as stated above, the board of county commissioners is capable of functioning and performing its statutory duties when one of its members abstains from a matter. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-37. Further, in a matter in which the objectivity of a

county commissioner is impaired, the commissioner has a duty to abstain from participating in the matter. *Id.* at 2-37 and 2-38. Accordingly, the potential conflicts of interest that may arise because the county and city may enter into contracts with each other do not prohibit a county commissioner from serving as a city fireman, provided the commissioner does not participate in any deliberations, discussions, negotiations, or votes concerning such contracts.¹⁶ *See id.* at 2-38.

Another conflict of interest may arise because the person's decisions as a county commissioner in annexation or detachment proceedings under R.C. Chapter 709 may affect his employment as a city fireman. R.C. 709.01 provides, in pertinent part, that, "[t]erritory may be annexed to, or detached from, municipal corporations, in the manner provided in [R.C. 709.01-.47]." When territory is annexed to or detached from a municipal corporation under R.C. Chapter 709, the amount of taxable property in the municipal corporation is either increased or decreased. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-39. This results in the municipal corporation's tax revenues correspondingly increasing or decreasing. Such a change in the municipal corporation's tax revenues could ultimately increase or decrease the budget of the municipal corporation's fire department. Any change in the budget of the fire department could have an impact on the person's employment as a fireman.

There are several instances in which the actions of a board of county commissioners in an annexation or detachment proceeding could affect the amount of taxable property in a city, and possibly, the budget of the city's fire department. *See, e.g.,* R.C. 709.033 (a board of county commissioners may allow a petition for annexation when it makes certain factual determinations); R.C. 709.16(C) (if the only territory to be annexed is contiguous territory owned by a county, the board of county commissioners, by resolution, may grant or deny the annexation). If a county commissioner who serves as a city fireman were required to deliberate, discuss, negotiate, or vote in an annexation or detachment proceeding involving

¹⁶It must be noted that R.C. 305.27 provides, in part, that, "[n]o county commissioner shall be concerned, directly or indirectly, in any contract for work to be done or material to be furnished for the county." *See also* R.C. 2921.42(A)(4) ("[n]o public official shall knowingly ... [h]ave an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected"). Whether a contract for work to be done or material to be furnished for the county exists between the county and city that employs the person as a fireman or whether, if such a contract does exist, the person has a prohibited interest in the contract are questions of fact that must be determined on a case-by-case basis at the local level. *See generally* Ohio Ethics Comm'n, Advisory Op. No. 91-001, slip op. at 4 (a township trustee who serves as a full-time paid employee of a fire company that contracts with the township does not have an interest in that contract unless (1) he has an ownership or fiduciary interest in the company, (2) he takes part in contract negotiations on behalf of the company, (3) his salary is based on the proceeds of the contract, (4) he receives a share of the contract's proceeds in the form of a commission or fee, (5) his responsibilities as an employee include participation in the administration or execution of the contract or he serves in a management position with the responsibility to oversee execution or administration of the contract, (6) the establishment or operation of his employing agency is dependent upon receipt of the contract, or (7) his tenure is dependent upon his employer receiving the award of the contract). A county commissioner who violates R.C. 305.27 is required to "forfeit not less than [200] nor more than [2,000] dollars, to be recovered by a civil action, in the name of the state, for use of the county" and "forfeit, in like manner, any compensation he may have received on such contract." R.C. 305.27.

the city, it might be difficult for the commissioner to perform his duties and exercise his discretion in a completely objective and disinterested manner because of his employment by the city as a fireman. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-39.

For the reasons that follow, the conflicts of interest arising in annexation and detachment proceedings also can be avoided. As stated previously, a county commissioner not only is able to remove himself from deliberations, discussions, negotiations, or votes in which his objectivity might be impaired, but has a duty to do so. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-39. A county commissioner who is a city fireman thus may abstain from deliberations, discussions, negotiations, or votes on any annexation or detachment proceeding concerning the city that employs him as a fireman. Therefore, this potential conflict of interest does not prohibit a county commissioner from holding the position of city fireman at the same time, provided the commissioner does not participate in any deliberations, discussions, negotiations, or votes concerning annexation or detachment proceedings involving the city. *See id.*

Conflicts of interest also exist because a county commissioner may be required to deliberate, discuss, negotiate, or vote on matters that relate to the provision of ambulance service, emergency medical service, or nonemergency patient transport service by the county. Your letter states that the city employing the commissioner as a fireman provides some of these services. Pursuant to various statutes, a board of county commissioners may provide, or make arrangements for providing, these services within the territory of the county. *See, e.g.,* R.C. 9.60(C) (a board of county commissioners may contract with any firefighting agency, private fire company, or emergency medical service organization to obtain fire protection or emergency medical services); R.C. 307.05 (a board of county commissioners may operate an ambulance service organization, emergency medical service organization, or a nonemergency patient transport service); R.C. 307.052-.058 (a county may participate in a joint emergency medical services district); R.C. 307.691 (a board of county commissioners may cooperate with, give financial assistance to, and provide equipment to any nonprofit corporation that provides ambulance service, emergency medical services, or nonemergency patient transport services); R.C. 505.72(B) (a board of county commissioners may enter into a contract with a joint ambulance district, whereby the county provides ambulance or emergency medical services to the district). Action taken by the board of county commissioners with respect to the provision of ambulance service, emergency medical service, or nonemergency patient transport service could affect the service area of, or services provided by, the city's fire department. This, in turn, could result in a larger or smaller city fire department. Accordingly, if a county commissioner who serves as a city fireman were required to deliberate, discuss, negotiate, or vote on matters that relate to the provision of ambulance service, emergency medical service, or nonemergency patient transport service, it might be difficult for the commissioner to put aside his loyalty to the city fire department because of his employment relationship with that department. *See* 2003 Op. Att'y Gen. No. 2003-041 at 2-342 and 2-343.

Like the previous conflicts of interest, this one may also be avoided. When matters relating to the provision of ambulance service, emergency medical service, or nonemergency patient transport service come before the board of county commissioners, the county commissioner will be able to remove himself from deliberations, discussions, negotiations, or votes on such matters without impairing the board's ability to discharge its duties with regard to these matters. By abstaining from participating in such matters, the commissioner accedes to the general rule requiring a public officer to abstain from participating in a matter in which his objectivity might be impaired. Hence, the previously mentioned conflict

of interest does not render the positions of county commissioner and city fireman incompatible, provided the person, as a county commissioner, does not participate in deliberations, discussions, negotiations, or votes on matters relating to the provision of ambulance service, emergency medical service, or nonemergency patient transport service. See 2002 Op. Att'y Gen. No. 2002-013 at 2-76.

The final conflict of interest that exists concerns the person's duty, as a city fireman, to serve as a fire safety inspector. A fire safety inspector is required to examine or investigate a building or other structure for violations of the state fire code and for dangerous conditions, and, if necessary, he may issue a citation in order to abate or remedy violations of the state fire code or dangerous conditions. See R.C. 3737.01(D); R.C. 3737.14; R.C. 3737.41; R.C. 3737.42; rule 1301:7-1-03; rule 1301:7-1-05; see also R.C. 737.27; R.C. 3750.16; R.C. 3781.03. A fire safety inspector may also order the immediate evacuation of a building or other structure that is unsafe, file a complaint to restrain any condition or practices in any building or upon any premises which violate the state fire code and are such that a fire or explosion hazard exists which could reasonably be expected to cause death or serious physical harm, and request the Attorney General or another legal officer to bring an action for an injunction or any other appropriate proceedings against any person violating or threatening to violate any provision of the state fire code or any order issued pursuant thereto in the court of common pleas in the county where the violation is occurring or is threatened to occur. R.C. 3737.44-46. A city fireman who is a fire safety inspector thus has the authority to examine and investigate county buildings and structures for fire and safety hazards and take such action as is necessary to safeguard the health and welfare of the public in such buildings and structures. See R.C. 3737.51(A) ("[n]o person¹⁷ shall knowingly violate any provision of the state fire code or any order made pursuant to it" (footnote added)); see, e.g., *Gamble v. Dobrosky*, No. L-98-1293, 1999 Ohio App. LEXIS 2528 (Lucas County June 4, 1999), *rev'd on other grounds*, 89 Ohio St. 3d 257, 730 N.E.2d 969 (2000). See generally *City of Bucyrus v. State Dept. of Health*, 120 Ohio St. 426, 429, 166 N.E. 370 (1929) (municipalities, under Ohio Const. Art. XVIII, which sets forth the constitutional provisions governing municipal corporations, "have no power to curtail the effect or defeat the enforcement of the sanitary regulations of the state"); 1970 Op. Att'y Gen. No. 70-054 at 2-87 (a "combined health district may be required to abate or suppress a nuisance under [R.C. 3709.22], which had been committed by the city"); 1956 Op. Att'y Gen. No. 7436, p. 819 (syllabus, paragraph three) ("[t]he jurisdiction of a county district board of health extends to property belonging to a municipality located within the territory of such district").

A board of county commissioners manages and controls the county's buildings and other structures. See R.C. 307.01; R.C. 307.02; R.C. 307.03; R.C. 307.083; R.C. 307.09; see also R.C. 305.16. It is, therefore, possible that the person as a city fireman may be required to examine and investigate a building or structure under his management and control as a county commissioner. See R.C. 3737.01(D); R.C. 3737.14; R.C. 3737.41; rule 1301:7-1-03; see, e.g., *Gamble v. Dobrosky*; see also R.C. 737.27; R.C. 3750.16; R.C. 3781.03. Also, as a city fireman, he may issue orders requiring the board of county commissioners, as the responsible person,¹⁸ to abate or remedy violations of the state fire code or dangerous conditions,

¹⁷For purposes of R.C. 3737.51, the term "[p]erson" includes "the state and any political subdivision of the state, and any other entity, public or private." R.C. 3737.01(E).

¹⁸As used in R.C. Chapter 3737 (Fire Marshal; fire safety), the phrase "[r]esponsible person" means the person responsible for compliance with the state fire code, including, but not limited to, the owner, lessee, agent, operator, or occupant of a building, premises, or vehicle." R.C. 3737.01(F).

and, if necessary to ensure compliance with his orders, take or cause legal action to be taken against the board. See R.C. 3737.44-.46; rule 1301:7-1-05; see, e.g., *Gamble v. Dobrosky*. Accordingly, if a city fireman who serves as a county commissioner were required to examine and investigate county buildings or structures for fire and safety hazards or to take such action as is necessary to ensure the safety of the public in such buildings or structures, it would be difficult for the person as a fireman to set aside his loyalty to the county when making decisions pertaining to the safety of county buildings and structures. Such a predisposition of loyalty could prevent the person from making completely objective and disinterested decisions or result in preferential treatment being accorded to the board of county commissioners. See 1985 Op. Att’y Gen. No. 85-074 at 2-292 (if a township is governed by a county zoning plan, a person who serves in the positions of township trustee and county zoning inspector is subject to a conflict of interest because the person, as county zoning inspector, is required to enforce the county zoning plan against the township and “may be required to initiate legal action against [the] township for a violation or proposed violation of the zoning plan pursuant to R.C. 303.24”); see also *State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344, 1934 Ohio Misc. LEXIS 1224 (Ct. App. Butler County 1934) (a conflict of interest results when the duties of one position may be administered or discharged in such a way as to result in favoritism and preference being accorded the other position).

For the following reasons, we believe that this conflict of interest may be avoided. No statute requires a city fireman who is certified as a fire safety inspector to examine and investigate county buildings or structures for fire and safety hazards or to take such action as is necessary to ensure the safety of the public in county buildings and structures. Rather, the specific duties of a city fireman are assigned by the chief of the fire department that employs him. See R.C. 737.09 (“[t]he chief of the fire department shall have exclusive control of the stationing and transferring of all firemen and other officers and employees in the department, under such general rules and regulations as the director of public safety prescribes”). Moreover, information provided with your request for an opinion indicates that each fireman in the city fire department is required to be certified as a fire safety inspector. See Administrative Code of the Codified Ordinances of the City of Tiffin § 143.04. Because the city fire department employs approximately 35 firemen, see Administrative Code of the Codified Ordinances of the City of Tiffin § 143.02, it appears that it is possible for a city fireman who is a county commissioner to remove himself from any examinations or investigations of county buildings or structures conducted by the city fire department or actions taken by the department to ensure the safety of the public in county buildings and structures.

Nevertheless, whether the responsibilities of a city fireman include examining or investigating county buildings or structures for fire and safety hazards or taking such action as is necessary to ensure the safety of the public in county buildings and structures or whether the person is able to remove himself from such situations are questions of fact that must be determined at the local level. See 1989 Op. Att’y Gen. No. 89-022 at 2-104 and 2-105 (“whether the job duties of a particular assistant auditor require any involvement with the particular township or municipality where he or she holds the additional position depends upon the organizational structure of the office of the auditor of state” and “whether the position of an assistant auditor below the rank of regional administrator operates as a check upon the public office of township clerk or city planning commissioner is a question of fact to be determined in each instance”). Accordingly, if the duties of the person as a city fireman do not include examining or investigating county buildings or structures for fire and safety hazards or taking such action as is necessary to ensure the safety of the public in county buildings and structures or if the person is able to remove himself from such situations, the

aforementioned conflict will not exist. *See generally* 1989 Op. Att'y Gen. No. 89-052 at 2-220 (if a person's duties as a county auditor employee do not involve conducting or participating in an audit of a law library association that employs him as a librarian, "then no conflict [of interest] as such exists, and the two positions would not be incompatible in this regard"); 1989 Op. Att'y Gen. No. 89-016 (syllabus) (the positions of investigator for the county coroner and city police chief are compatible, provided the person as an investigator "is not called upon by the coroner to investigate a death within the jurisdiction of the police chief of the city").

Although we have concluded that a full-time fireman employed by the City of Tiffin and holding the rank of captain may also serve as a Seneca County commissioner when he refrains from participating in various matters, we would be remiss if we failed to caution you that given the number and nature of the potential conflicts of interest it may be impractical for the person to hold both of these positions at the same time. *See generally* 1941 Op. Att'y Gen. No. 3869, p. 445 (syllabus) ("[t]he office of mayor of a village is not per se incompatible with the position of chief clerk in the office of the county engineer, but may become so if the duties of each are so numerous or arduous as to render unlikely a proper execution of both"). If the person, as a county commissioner, is continually removing himself from potential conflicts, the county's affairs may, in general, suffer or go unattended. Additionally, the person in his capacity as a county commissioner may not perform in a competent manner the important duties the citizens of the county entrust to him. It is conceivable that the situation could reach the point where the board of county commissioners is spending an inordinate amount of time determining whether the person has a conflict of interest in particular matters. In light of these practical concerns, we strongly urge you and the other local officials involved to carefully consider the multitude of potential problems that may occur when a person serves simultaneously as a Seneca County commissioner and full-time fireman employed by the City of Tiffin and holding the rank of captain.

Conclusions

In summary, it is my opinion, and you are hereby advised as follows:

1. A full-time fireman employed by the City of Tiffin and holding the rank of captain may also serve as a Seneca County commissioner, so long as a charter provision or ordinance of the city permits a person employed as a fireman to participate in partisan politics, and it is physically possible for the person to fully and effectively carry out the duties and responsibilities of each of these positions.
2. A full-time fireman employed by the City of Tiffin and holding the rank of captain may also serve as a Seneca County commissioner, but in his capacity as a county commissioner he may not participate in any deliberations, discussions, negotiations, or votes concerning an alternative method of apportioning the undivided local government fund or the undivided local government revenue assistance fund; tax levies or bond issues for additional funding when the city has placed such a levy or bond issue on the ballot; a tax levy or bond issue for providing ambulance service or emergency medical service; a contract between the county and city; annexation or detachment proceedings involving the city; or matters that relate to the provision of ambulance service, emergency medical service, or nonemergency patient transport service.

3. A full-time fireman employed by the City of Tiffin and holding the rank of captain may also serve as a Seneca County commissioner, but in his capacity as a city fireman he may not be responsible for examining or investigating county buildings or structures for fire and safety hazards or taking such action as is necessary to ensure the safety of the public in county buildings and structures.

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