October 2, 2008

The Honorable Thomas L. Sartini
Ashtabula County Prosecuting Attorney
Ashtabula County Courthouse
25 West Jefferson Street
Jefferson, Ohio 44047-1092

SYLLABUS: 2008-032

R.C. 3313.13 prohibits a person from serving simultaneously as the Ashtabula City Solicitor and a member of the board of education of the Ashtabula Area City School District. (1983 Op. Att'y Gen. No. 83-038; 1979 Op. Att'y Gen. No. 79-100; 1970 Op. Att'y Gen. No. 70-081; 1954 Op. Att'y Gen. No. 3644, p. 135; 1934 Op. Att'y Gen. No. 2478, vol. I, p. 435, overruled to the extent that they are inconsistent with this opinion.)

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OPINION NO. 2008-032

The Honorable Thomas L. Sartini
Ashtabula County Prosecuting Attorney
Ashtabula County Courthouse
25 West Jefferson Street
Jefferson, Ohio 44047-1092

Dear Prosecutor Sartini:

You have requested an opinion whether the positions of Ashtabula City Solicitor and member of the board of education of the Ashtabula Area City School District are compatible. Based on the prohibition set forth in R.C. 3313.13, these two positions are incompatible.

R.C. 3313.13's Prohibition

A person may not serve in two public positions concurrently when a statute or constitutional provision prohibits such dual service. 2004 Op. Att'y Gen. No. 2004-049 at 2-416; 2004 Op. Att'y Gen. No. 2004-030 at 2-270; *see* 2 Ohio Admin. Code 123:1-46-02(F). R.C. 3313.13 prohibits a person who serves as a prosecuting attorney, city director of law, or other official acting in a similar capacity from serving on a board of education unless one of the exceptions enumerated therein applies:

> Except as otherwise provided in this section, no prosecuting attorney, city director of law, or other official acting in a similar capacity shall be a member of a board of education.
>
> An assistant prosecuting attorney may serve as a member of a board of education of a school district in any county other than the county in which the assistant prosecuting attorney is employed if the board of education's school district is not contiguous to the county in which the assistant prosecuting attorney is employed.
>
> A city director of law who was appointed to that position under a city charter, village solicitor, or other chief legal officer of a municipal corporation may serve as a member of a board of education for which the chief legal officer is not the legal adviser and attorney under [R.C. 3313.35]. A city director of law who was appointed to that position under a city charter may serve as a member of a board of education for which the city director of law is the legal adviser and attorney under [R.C. 3313.35], but only if the board uses no legal services of the

> office of the city law director or if the legal services of that office that it does use are performed under contract by persons not employed by that office. An employee of an appointed or elected city director of law may serve as a member of a board of education for which the city director of law is not the legal adviser and attorney under [R.C. 3313.35].

See generally Bennett v. Celebrezze, 34 Ohio App. 3d 260, 518 N.E.2d 25 (Lorain County 1986) (R.C. 3313.13 prohibits an assistant county prosecuting attorney from serving as a member of the board of education of a city school district); 2004 Op. Att'y Gen. No. 2004-049 (same as the previous parenthetical); 1979 Op. Att'y Gen. No. 79-100 (an assistant city solicitor of a charter city may not serve simultaneously as a member of the board of education of the city school district that includes the city); 1969 Op. Att'y Gen. No. 69-133 (same as the first parenthetical).

Resolution of your question thus requires that we first consider whether R.C. 3313.13's prohibition applies to the position of Ashtabula City Solicitor. If the prohibition applies, we must then ascertain whether any of the exceptions to the prohibition allow a person to serve simultaneously as the Ashtabula City Solicitor and a member of the board of education of the Ashtabula Area City School District.

Application of R.C. 3313.13 to the Position of Ashtabula City Solicitor

The plain language of R.C. 3313.13 prohibits a "prosecuting attorney, city director of law, or other official acting in a similar capacity" from being a member of the board of education of the Ashtabula Area City School District unless one of the exceptions set forth in R.C. 3313.13 applies. A person who serves as the Ashtabula City Solicitor does not serve as a prosecuting attorney, *see* R.C. 309.01, or city director of law, *see* R.C. 705.11; R.C. 733.49, for purposes of R.C. 3313.13. However, for the reasons that follow, the Ashtabula City Solicitor is an official that acts in a similar capacity as a city director of law.

A city director of law is the legal adviser to, and attorney for, the city, and for all city officers in matters relating to their official duties. R.C. 705.11; R.C. 733.51; R.C. 733.53; R.C. 733.54. A city director of law prepares all contracts, bonds, and other instruments in writing in which the city is concerned and prosecutes criminal cases. R.C. 705.11; R.C. 733.51; R.C. 733.52.

Under the City of Ashtabula's charter,[1] the Ashtabula City Solicitor is an elected officer of the city who performs the same duties as are statutorily delegated to a city director of law. Specifically, section 32 of the charter reads, in part, as follows:

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[1] The General Assembly is authorized to 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. Ohio Const. art. XIII, § 6; Ohio Const. art. XVIII, § 2.

> The City Solicitor shall be an attorney-at-law admitted to practice in the State of Ohio and be an elector of the City, and shall be a qualified elector therein prior to his election, and shall have such assistants of like qualifications as the Council may authorize. The City Solicitor shall be the legal adviser of and attorney and counsel for the Municipality, and for all officers and departments thereof in matters relating to their official duties. He shall prepare all contracts, bonds, and other instruments in writing in which the Municipality is concerned, and shall endorse on each his approval of the form and correctness thereof; and no such contract with the City shall take effect until his approval is endorsed thereon. He and his assistants shall be the prosecuting attorney of the Municipal Court, and he shall perform such other duties as the Council shall require.
>
> The City Solicitor shall be nominated and elected by the legal voters of the City at the regular municipal election for a term of 4 years; and, except as hereinafter set forth, shall serve until his successor is elected and qualified. He, the City Solicitor, shall be nominated and elected in the same manner as is provided in Section 42 of the present Charter of the City of Ashtabula for the elective officers of the City and shall be nominated in the same manner as is provided for nomination of candidates for councilman-at-large.
>
> …. The office of City Solicitor is hereby declared to be an elective office.

In light of the language of section 32 of the City of Ashtabula's charter, it is apparent that the Ashtabula City Solicitor, as an elected officer of the City of Ashtabula, is an official of the city who acts in a similar capacity as a city director of law. *See generally* 1937 Op. Att'y Gen. No. 1160, vol. II, p. 2014 (syllabus, paragraph one) ("[t]he director of law, city attorney, and any

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Under Article XVIII, § 2 of the Ohio Constitution, "there are two categories of statutory municipal governments: the form established by general laws and the optional forms of government which may be adopted by the electors of the municipality." 1989 Op. Att'y Gen. No. 89-050 at 2-213. General laws establishing a statutory form of government for noncharter municipal corporations are found in R.C. Chapters 731 and 733, while the optional forms of statutory government are set forth in R.C. Chapter 705, *see* R.C. 705.41-.48 (commission plan); R.C. 705.51-.60 (city manager plan); and R.C. 705.71-.86 (federal plan). 1989 Op. Att'y Gen. No. 89-050 at 2-213 and 2-214.

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 Article XVIII, § 7 of the Ohio Constitution, and may, subject to the provisions of Article XVIII, § 3 of the Ohio Constitution, exercise under such charter all powers of local self-government. 1954 Op. Att'y Gen. No. 4244, p. 475 (syllabus, paragraph one). 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.

other officials who serve[] as the duly elected or appointed legal counsel and attorney for the city, are such officials as serve in a capacity similar to that of city solicitor"); 1912 Annual Report of the Attorney General, Op. Att'y Gen. No. 173, vol. I, p. 487 (syllabus, paragraph two) ("[t]he village solicitor being appointed by contract, fulfilling only contractual duties, serving for an indefinite term and not being obligated to take oath or give bonds, is not an 'official' within the meaning of [G.C. 4762 (analogous to current R.C. 3313.13)], which stipulates that these duties shall fall upon 'any official serving in a similar capacity' to that of prosecuting attorney or city solicitor"). *See generally also* 1979 Op. Att'y Gen. No. 79-100 (indicating that a city solicitor of a charter city who is the city's attorney and legal adviser to its officers and departments is an official acting in a similar capacity as the prosecuting attorney or city director of law). Accordingly, the prohibition set forth in R.C. 3313.13 applies to the position of Ashtabula City Solicitor and, as such, a person who serves in that position may not serve as a member of the board of education of the Ashtabula Area City School District unless one of the exceptions listed therein applies.[2]

Situations in Which a City Solicitor May Serve on the Board of Education of a City School District

The single exception set forth in R.C. 3313.13 that applies to a city solicitor elected to that position under a city charter states that "[a] city director of law who was appointed to that position under a city charter, village solicitor, or *other chief legal officer of a municipal corporation* may serve as a member of a board of education for which the chief legal officer is not the legal adviser and attorney under [R.C. 3313.35]." (Emphasis added.) Thus, an elected or appointed city solicitor of a charter city who serves as the city's chief legal officer is not prohibited by R.C. 3313.13 from holding the position of member of the board of education of a city school district when he is not required to be the board's legal adviser and attorney under R.C. 3313.35.[3]

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[2] No language in the City of Ashtabula's charter conflicts with the language of R.C. 3313.13 prohibiting a prosecuting attorney, city director of law, or other official acting in a similar capacity from serving on a board of education of a city school district. Moreover, we presume that the City of Ashtabula's legislative authority has not enacted an ordinance or resolution that conflicts with R.C. 3313.13. This opinion therefore does not consider whether a city charter provision, ordinance, or resolution may supersede R.C. 3313.13.

[3] It could be argued that the language excepting a "chief legal officer of a municipal corporation" from R.C. 3313.13's prohibition does not apply to a chief legal officer who is elected. However, insofar as the General Assembly has not used the terms "appointed" and "elected" to describe when the exception applies to a chief legal officer of a municipal corporation, while using such terms in other instances to limit the application of exceptions to R.C. 3313.13's prohibition, we are persuaded that the General Assembly did not intend to limit the application of the language excepting a "chief legal officer of a municipal corporation" from

As explained above, the Ashtabula City Solicitor, like a city director of law described in the statutes establishing the statutory and optional forms of government for a city, serves as legal counsel for, and provides legal advice to the officers and departments of, the city. *See* R.C. 705.11; R.C. 733.49; R.C. 733.51-.53; City of Ashtabula Charter § 32. In addition, the Ashtabula City Solicitor is the highest-ranking legal officer serving the city. *See* City of Ashtabula Charter § 32 ("[t]he City Solicitor … shall have such assistants of like qualifications as the Council may authorize"); *Thomas v. Bd. of Comm'rs of Hamilton County*, 88 Ohio St. 489, 493, 104 N.E. 536 (1913) (assistant city solicitors perform their assigned duties and responsibilities at the direction of the city solicitor). *See generally* City of Ashtabula Charter § 29 ("[e]xcepting the departments of City Solicitor, City Auditor, City Treasurer, and Board of Health, the City Manager shall be the acting head of each and every department or division of the City until otherwise provided by the Council"). As the highest-ranking legal officer of the City of Ashtabula, it follows that the Ashtabula City Solicitor is the city's chief legal officer and may serve as a member of the board of education of the Ashtabula Area City School District so long as he is not required to be the board's legal adviser and attorney under R.C. 3313.35. *See generally Merriam-Webster's Collegiate Dictionary* 214 (11th ed. 2005) (the term "chief," as an adjective, means "accorded highest rank or office").

Duty of the Ashtabula City Solicitor to be the Legal Adviser and Attorney for the Ashtabula Area City School District

Let us now consider whether R.C. 3313.35 requires the Ashtabula City Solicitor to be the legal adviser and attorney for the Ashtabula Area City School District. R.C. 3313.35 provides, in pertinent part, as follows:

> *In city school districts, the city director of law shall be the legal adviser and attorney for the board thereof, and shall perform the same services for such board as required of the prosecuting attorney for other boards of the county. Such duties shall devolve upon any official serving in a capacity similar to that of prosecuting attorney or city director of law for the territory wherein a school district is situated regardless of his official designation.* In a district which becomes a city school district pursuant to [R.C. 3311.10[4]] the legal adviser shall

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R.C. 3313.13's prohibition to a chief legal officer who is appointed. *See generally State v. Teamer*, 82 Ohio St. 3d 490, 491, 696 N.E.2d 1049 (1998) (an unambiguous statute may not be modified by "deleting words used or inserting words not used"); *Lynch v. Gallia County Bd. of Comm'rs*, 79 Ohio St. 3d 251, 254, 680 N.E.2d 1222 (1997) ("a reviewing court must not construe a statute so as to supply words that are omitted"); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 66, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

[4] Pursuant to R.C. 3311.10, more than one municipal corporation may be included within the territorial boundaries of a city school district.

> be the solicitor or director of law of the largest of the municipal corporations all or a part of which is included within the school district boundaries. No compensation in addition to such officer's regular salary shall be allowed for such services. (Emphasis added.)

The language of R.C. 3313.35 provides that a city solicitor who performs the duties of a city director of law is the legal adviser and attorney for the board of education of a city school district encompassing all or part of the city unless the exception applicable to city school districts created pursuant to R.C. 3311.10 applies. Thus, R.C. 3313.35 requires the Ashtabula City Solicitor to serve as the legal adviser and attorney for the Ashtabula Area City School District since we have determined that the Ashtabula City Solicitor serves in a capacity similar to that of city director of law.[5]

A charter city's home rule powers under Article XVIII, §§ 3 and 7 of the Ohio Constitution permit a charter city to supersede R.C. 3313.35's requirement that a city solicitor serve as the legal adviser and attorney for the board of education of the city school district that includes the city. Article XVIII, § 3 of the Ohio Constitution states 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." Article XVIII, § 7 of the Ohio Constitution provides further 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."

In matters of local self-government involving procedure,[6] it has long been held by the courts of Ohio that a city charter provision prevails over a conflicting state statute. As summarized by the Ohio Supreme Court in *State ex rel. Lightfield v. Village of Indian Hill,* 69 Ohio St. 3d 441, 442, 633 N.E.2d 524 (1994):

> The Home Rule Amendment to the Ohio Constitution governs the respective legislative roles of the state and its municipalities. In matters of local self-government, if a portion of a municipal charter expressly conflicts with a parallel state law, the charter provisions will prevail. The appointment of officers to a municipality's police force is an exercise of local self-government within the meaning of the Ohio Constitution. In order for the municipal charter to supersede the state law regarding police promotions, the conflicts must be in the "express …

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[5] From the information you have provided to us, we presume that the exception set forth in R.C. 3313.35 concerning city school districts created pursuant to R.C. 3311.10 does not apply.

[6] A matter of local self-government involves procedure when the matter relates to the structural organization or the form of government of a municipal corporation. *See N. Ohio Patrolmen's Benevolent Ass'n v. City of Parma,* 61 Ohio St. 2d 375, 381-83, 402 N.E.2d 519 (1980); 1959 Op. Att'y Gen. No. 819, p. 513, at 518-20.

> language" of the charter and not by mere inference. Furthermore, while the express language of a charter may nullify a state civil service law, express charter authorization is necessary to enable municipalities to adopt ordinances or administrative rules that will prevail over statutory provisions in case of conflict. (Citations omitted.)

Accord State ex rel. Regetz v. Cleveland Civil Serv. Comm'n, 72 Ohio St. 3d 167, 648 N.E.2d 495 (1995); *State ex rel. Bednar v. City of North Canton*, 69 Ohio St. 3d 278, 280, 631 N.E.2d 621 (1994); *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d 106, 524 N.E.2d 447 (1988).

Therefore, in order for a city charter provision to supersede a state statute in a matter of local self-government involving procedure, the conflict must be in the express language of the charter and not by mere inference. *See State ex rel. Regetz v. Cleveland Civil Serv. Comm'n*; *State ex rel. Lightfield v. Village of Indian Hill*; *State ex rel. Bednar v. City of North Canton*; *State ex rel. Bardo v. City of Lyndhurst*. Also, an ordinance or resolution of a charter city is capable of superseding a state statute involving procedure when (1) the city's charter reserves home rule authority to permit enactment of ordinances or resolutions at variance with state statutes and (2) the city's legislative authority enacts an accompanying ordinance or resolution that conflicts with the state statute. *See State ex rel. Regetz v. Cleveland Civil Serv. Comm'n*; *State ex rel. Lightfield v. Village of Indian Hill*; *State ex rel. Bednar v. City of North Canton*; *State ex rel. Bardo v. City of Lyndhurst*. This means that, in a charter city such as the City of Ashtabula, R.C. 3313.35 applies unless there is either (1) a conflicting charter provision or (2) a charter provision that reserves home rule authority to permit enactment of ordinances or resolutions at variance with state statutes and an accompanying ordinance or resolution that conflicts with R.C. 3313.35.[7]

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[7] Prior opinions of the Attorneys General have indicated that a person serving as a city director of law or other official serving in a capacity similar to that of city director of law is not required by R.C. 3313.35 to act as the legal adviser and attorney for the board of education of the city school district that includes the city when the city's charter is silent as to whether the person must act as the legal adviser and attorney for the board of education. 1983 Op. Att'y Gen. No. 83-038 at 2-144 ("when a city school district is located in a city that has adopted … a charter [that designates the duties of the law director but does not, directly or indirectly, impose upon the law director the duty to advise the board of education], the city school district has no statutory legal counsel"); 1979 Op. Att'y Gen. No. 79-100 at 2-310 ("[a]lthough R.C. 3313.35 requires city solicitors to represent city school districts, a solicitor of a charter city has no duty or obligation to provide such representation where not so required under the city's charter"); 1970 Op. Att'y Gen. No. 70-081 at 2-139 ("[s]ince the Charter does not impose … a duty [to act as legal adviser for the city board of education], and since Cleveland is a city chartered under Section 7, Article XVIII of the Constitution, [R.C. 3313.35] will not operate to impose such a duty"); 1954 Op. Att'y Gen. No. 3644, p. 135 (syllabus, paragraph two) ("[i]n case a city has

We discern no language in the City of Ashtabula's charter that conflicts with R.C. 3313.35, nor does the information provided indicate that the City of Ashtabula's legislative authority has enacted an ordinance or resolution that conflicts with R.C. 3313.35.[8] Consequently, R.C. 3313.35 is applicable to the Ashtabula City Solicitor since no charter provision, ordinance, or resolution conflicts with R.C. 3313.35.

This conclusion is supported further by the language of the City of Ashtabula's charter. Section 80 of the City of Ashtabula's charter states:

> *All general laws of the State applicable to municipal corporations, now or hereafter enacted, and which are not in conflict with the provisions of this Charter, or with ordinances or resolutions hereafter enacted by the Council, shall be applicable to this City and all officers and departments thereof*; provided that nothing contained in this Charter shall be construed as limiting the power of the

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adopted a charter pursuant to Section 7 of Article XVIII of the Constitution, which does not either directly or indirectly impose on its legal officer the duty to act as the legal adviser and attorney of the board of education, [R.C. 3313.35] will not operate to impose such duty"); 1934 Op. Att'y Gen. No. 2478, vol. I, p. 435 (syllabus, paragraph one) ("[i]n a municipality which has adopted a charter, which does not provide that the solicitor or law director of the said municipality shall act as adviser to and attorney for the board of education of the school district of said city and does not contain a provision expressly imposing upon the said solicitor or law director the duties imposed by the general laws of the state, it is not the duty of the said solicitor or law director to act as adviser to and attorney for the said board of education without compensation").

However, insofar as it is a well-settled principle of home-rule jurisprudence that "[t]he rule of charter supremacy applies only where [a] conflict appears by the express terms of the charter and not by mere inference," *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d 106, 109, 524 N.E.2d 447 (1988), it follows that a state statute will apply when a city charter is silent on the matter, *Jacomin v. City of Cleveland*, 70 Ohio App. 3d 163, 165, 590 N.E.2d 846 (Cuyahoga County 1990); 1962 Op. Att'y Gen. No. 3103, p. 496, at 501. Accordingly, we overrule 1983 Op. Att'y Gen. No. 83-038; 1979 Op. Att'y Gen. No. 79-100; 1970 Op. Att'y Gen. No. 70-081; 1954 Op. Att'y Gen. No. 3644, p. 135; and 1934 Op. Att'y Gen. No. 2478, vol. I, p. 435 to the extent that they conclude that a person serving as a city director of law or other official serving in a capacity similar to that of city director of law is not required by R.C. 3313.35 to act as the legal adviser and attorney for the board of education of the city school district that includes the city when the city's charter is silent as to whether the person must act as the legal adviser and attorney for the board of education.

[8] This opinion does not consider whether the City of Ashtabula's charter reserves home rule authority to permit enactment of ordinances or resolutions at variance with R.C. 3313.35.

> Council to enact any ordinance or resolution not in conflict with the Constitution of the State or with the express provisions of this Charter. (Emphasis added.)

Section 80 of the City of Ashtabula's charter thus makes "[a]ll general laws of the State applicable to municipal corporations … applicable to" the Ashtabula City Solicitor unless there is a conflict with the provisions of the City of Ashtabula's charter or an ordinance or resolution of the City of Ashtabula.

The phrase "general laws," as used in section 80 of the City of Ashtabula's charter, is not specifically defined in the charter. It is well understood, however, that, in the context of municipal home-rule analysis, the phrase "general laws" refers to statutes enacted by the General Assembly that have application to cities throughout the entire state. *Village of Linndale v. State*, 85 Ohio St. 3d 52, 54, 706 N.E.2d 1227 (1999); *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 83, 167 N.E. 158 (1929); *Leis v. Cleveland Ry. Co.*, 101 Ohio St. 162, 128 N.E. 73 (1920); *Fitzgerald v. City of Cleveland*, 88 Ohio St. 338, 103 N.E. 512 (1913); *see also City of Dublin v. State*, 118 Ohio Misc. 2d 18, 2002-Ohio-2431, 769 N.E.2d 436, ¶223 (C.P. Franklin County 2002) ("[t]he term 'general law' is a term of art that does not include every law that the General Assembly enacts"). *See generally* Ohio Const. art. II, § 1 (the General Assembly is the legislative body empowered to enact laws that operate throughout the state). Under the Ohio Constitution, the General Assembly is authorized to "provide for the organization of cities … by general laws," Ohio Const. art. XIII, § 6, and pass "[g]eneral laws … to provide for the incorporation and government of cities," Ohio Const. art. XVIII, § 2. The phrase "general laws," as used in section 80 of the City of Ashtabula's charter, thus encompasses those statutes enacted by the General Assembly that provide for the organization and government of cities throughout the state.[9]

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[9] Legal counsel for the Ashtabula Area City School District has advised that the four-part test set forth in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (2002) for determining whether a statute is a general law for purposes of Article XVIII, § 3 of the Ohio Constitution applies when determining whether a statute is a general law for purposes of section 80 of the City of Ashtabula's charter. *See City of Canton v. State* (syllabus) (to constitute a general law for purposes of Article XVIII, § 3 of the Ohio Constitution, "a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally"). We reject this argument for the following reason.

The test for determining whether a statute is a general law for purposes of Article XVIII, § 3 of the Ohio Constitution is used to identify general laws of the state setting forth police, sanitary, or similar regulations that prevail over conflicting charter provisions, ordinances, and regulations that also address police, sanitary, or similar regulations. As explained by the Ohio

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Supreme Court in *Am. Fin. Servs. Ass'n v. City of Cleveland,* 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶23 (2006):

> The first step in a home-rule analysis is to determine "whether the matter in question involves an exercise of local self-government or an exercise of local police power." *Twinsburg v. State Emp. Relations Bd.* (1988), 39 Ohio St. 3d 226, 228, 530 N.E.2d 26, overruled on other grounds, *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St. 3d 1, 20, 539 N.E.2d 103. If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction. On the other hand, if, as is more likely, *the ordinance pertains to concurrent police power rather than the right to self-government, the ordinance that is in conflict must yield in the face of a general state law*. (Emphasis added.)

Accord Ohioans for Concealed Carry, Inc. v. City of Clyde, slip op. 2008-Ohio-4605, ¶24-26 (2008); *Mendenhall v. City of Akron,* 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶18 (2008). *See generally State ex rel. Canada v. Phillips,* 168 Ohio St. 191, 151 N.E.2d 722 (1958) (syllabus, paragraph four) ("[t]he words, 'as are not in conflict with general laws' found in Section 3 of Article XVIII of the Constitution, modify the words 'local police, sanitary and other similar regulations' but do not modify the words 'powers of local self-government'"). The *City of Canton v. State* test for determining whether a statute is a general law for purposes of Article XVIII, § 3 of the Ohio Constitution is therefore used to identify general laws of the state setting forth police, sanitary, or similar regulations that prevail over conflicting charter provisions, ordinances, and regulations that also address police, sanitary, or similar regulations.

In contrast, section 80 of the City of Ashtabula's charter sets forth the instances in which the city's charter provisions, ordinances, and resolutions prevail over the general laws of the state: "All general laws of the State applicable to municipal corporations, … and *which are not in conflict* with the provisions of this Charter, or with ordinances or resolutions hereafter enacted by the Council, *shall be applicable* to [the City of Ashtabula] and all officers and departments thereof." (Emphasis added.) This section thus states that the "general laws of the State applicable to municipal corporations" apply to the City of Ashtabula only when there is no conflict with the provisions of the City of Ashtabula's charter or an ordinance or resolution of the City of Ashtabula. In other words, this charter section requires the city's charter provisions, ordinances, and resolutions to prevail over the "general laws of the State applicable to municipal corporations" when there is a conflict.

Because the Ohio Constitution requires the general laws of the state setting forth police, sanitary, or similar regulations to prevail over conflicting charter provisions, ordinances, and resolutions when certain criteria are satisfied, *see City of Canton v. State*, the phrase "general laws," as used in section 80 of the City of Ashtabula's charter, can not mean general laws that set

Nothing in the language of R.C. 3313.35 or elsewhere in the Revised Code limits the application of R.C. 3313.35 to certain cities. Thus, the General Assembly intends for R.C. 3313.35 to operate throughout the entire state. *See generally Am. Fin. Servs. Ass'n v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶34 (2006) (Ohio's predatory-lending law applies uniformly to all parts of the state since it "subjects every entity making loans in Ohio to the same obligations"). The statute also provides for the organization and government of cities insofar as it establishes the duties of a city director of law or an official acting in a similar capacity to that of city director of law. *See generally Fitzgerald v. City of Cleveland*, at 344 ("[i]t will not be disputed that one of the powers of government is that of determining what officers shall administer the government"). R.C. 3313.35 therefore is included among the "general laws of the State applicable to municipal corporations" that are made applicable to the Ashtabula City Solicitor by section 80 of the City of Ashtabula's charter.

This conclusion is buttressed by the Ohio Supreme Court's decision in *State ex rel. Grandview Heights City Sch. Dist. Bd. of Educ. v. Morton*, 44 Ohio St. 2d 151, 339 N.E.2d 663 (1975), which concerned a request for a writ of mandamus to compel the solicitor for the City of Grandview Heights to furnish free legal services to the board of education of the Grandview Heights City School District. In *State ex rel. Grandview Heights City Sch. Dist. Bd. of Educ. v. Morton* the solicitor and other officials for the City of Grandview Heights claimed that, under the city's charter, the solicitor had no obligation to provide legal advice to the board of education of the Grandview Heights City School District. The board of education countered that the following language of section 43 of the City of Grandview Heights' charter compelled the city's solicitor to furnish legal advice to the board of education: "In addition to the duties imposed upon the city solicitor by this charter or required of him by ordinance in accordance therewith, he shall perform the duties which are imposed upon city solicitors by the general laws of the state." *State ex rel. Grandview Heights City Sch. Dist. Bd. of Educ. v. Morton*, at 152 (quoting section 43 of the City of Grandview Heights' charter).

The court construed the language of the charter provision requiring the city solicitor to "perform the duties which are imposed upon city solicitors by the general laws of the state" and R.C. 3313.35 together and concluded that R.C. 3313.35 is a general law of this state. *State ex rel. Grandview Heights City Sch. Dist. Bd. of Educ. v. Morton*, at 152. And, as such, section 43 of the City of Grandview Heights' charter obligated the solicitor for the City of Grandview

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forth police, sanitary, or similar regulations. If the phrase "general laws," as used in section 80 of the City of Ashtabula's charter, is construed to mean the general laws of the state setting forth police, sanitary, or similar regulations, the charter section would authorize that which Article XVIII, § 3 of the Ohio Constitution prohibits. Instead, the phrase "general laws," as used in section 80 of the City of Ashtabula's charter, encompasses those statutes enacted by the General Assembly to provide for the organization and government of cities throughout the state since a charter city may trump such statutes through the use of its home rule powers under Article XVIII, §§ 3 and 7 of the Ohio Constitution.

Heights to "provide free legal services to the [board of education of the] Grandview Heights City School District."[10] *Id.*; *see also* 1934 Op. Att'y Gen. No. 2478, vol. I, p. 435 (syllabus, paragraph one) (indicating that, under G.C. 4761 (now R.C. 3313.35), the solicitor or law director of a charter city is required to "act as adviser to and attorney for the board of education of the school district of said city" when the city's charter requires the city solicitor or law director "to act as adviser to and attorney for the board of education" and contains "a provision expressly imposing upon the said solicitor or law director the duties imposed by the general laws of the state"). *See generally* 1954 Op. Att'y Gen. No. 3644, p. 135, at 139 (R.C. 3313.35 may apply to a solicitor or law director of a city that has adopted a charter when the city has incorporated in its charter "a general provision whereby, with the purpose of enlarging their powers they adopt as a part of such charter all of the statutes relating to municipalities 'not inconsistent with this charter.' By such provision, a city might engraft on itself the burden of obedience to [R.C. 3313.35] from which it would otherwise be exempt").

In reaching its conclusions, the court elaborated further as follows:

> The citizens of Grandview Heights framed Section 43 of their charter to explicitly incorporate those general laws of the state which devolve duties upon city solicitors. In doing so, they foreclosed [the city solicitor's and other city officials'] contention that enforcement of R.C. 3313.35 is inconsistent with exercise of the power of local self-government. *See* Opinions of Attorney General (1934), 435, 439, No. 2478.[11] (Footnote added.)

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[10] 1970 Op. Att'y Gen. No. 70-081 concluded that the language of a city charter requiring the city's director of law to "perform the duties which are imposed upon city solicitors by the general law of the state" did not impose upon the city's director of law R.C. 3313.35's duty to act as the legal adviser and attorney for the board of education of the city school district that includes the city. In light of the Ohio Supreme Court's holding in *State ex rel. Grandview Heights City Sch. Dist. Bd. of Educ. v. Morton*, 44 Ohio St. 2d 151, 339 N.E.2d 663 (1975) that the language of a city charter requiring a city solicitor to "perform the duties which are imposed upon city solicitors by the general laws of the state" imposes upon the city's solicitor R.C. 3313.35's duty to act as the legal adviser and attorney for the board of education of the city school district that includes the city, we overrule the aforementioned conclusion reached in 1970 Op. Att'y Gen. No. 70-081.

[11] 1934 Op. Att'y Gen. No. 2478, vol. I, p. 435, at 439 noted:

> It is significant that in some city charters express provision is made for its solicitor or law director to act as attorney for the board of education of the school district in which the city is located. For instance, in Section 77 of the charter of the City of Columbus it is provided that the city solicitor shall perform the duties which are imposed upon city solicitors by the general law of the state. This

State ex rel. Grandview Heights City Sch. Dist. Bd. of Educ. v. Morton, at 154.

Like the charter provision considered by the court in *State ex rel. Grandview Heights City Sch. Dist. Bd. of Educ. v. Morton*, section 80 of the City of Ashtabula's charter similarly makes the general laws of the state that devolve duties upon city solicitors applicable to the Ashtabula City Solicitor. Accordingly, pursuant to section 80 of the City of Ashtabula's charter, R.C. 3313.35 is applicable to the Ashtabula City Solicitor since, as stated above, R.C. 3313.35 does not conflict with any of the provisions of the City of Ashtabula's charter or an ordinance or resolution of the City of Ashtabula. As a result, R.C. 3313.35 requires the Ashtabula City Solicitor to act as the legal adviser and attorney for the board of education of the Ashtabula Area City School District.

Because the Ashtabula City Solicitor acts as the legal adviser and attorney for the board of education of the Ashtabula Area City School District, the exception to R.C. 3313.13 applicable to a chief legal officer of a city who "is not the legal adviser and attorney [of a city school district] under [R.C. 3313.35]" does not apply to the Ashtabula City Solicitor with regard to the Ashtabula Area City School District. Hence, no exceptions to R.C. 3313.13's prohibition apply, and, as such, R.C. 3313.13 prohibits a person from serving simultaneously as the Ashtabula City Solicitor and a member of the board of education of the Ashtabula Area City School District.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that R.C. 3313.13 prohibits a person from serving simultaneously as the Ashtabula City Solicitor and a member of the board of education of the Ashtabula Area City School District. (1983 Op. Att'y Gen. No. 83-038; 1979 Op. Att'y Gen. No. 79-100; 1970 Op. Att'y Gen. No. 70-081; 1954 Op. Att'y Gen. No. 3644, p. 135; 1934 Op. Att'y Gen. No. 2478, vol. I, p. 435, overruled to the extent that they are inconsistent with this opinion.)

Respectfully,

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provision has always been regarded as requiring the solicitor to act as attorney for the Columbus City Board of Education in accordance with the provisions of [G.C. 4761 (now R.C. 3313.35)].