

OPINION NO. 2012-005**Syllabus:**

2012-005

1. A member of a board of county commissioners may serve simultaneously as a sewage treatment system appeals board member for the same county provided that he does not participate in any deliberations, discussions, negotiations, or votes concerning arrangements between the county and the sewage treatment system appeals board relating to the sewage treatment system appeals board's use, rental, or lease of county facilities.
2. A member of a sewage treatment system appeals board may serve simultaneously as a county commissioner for the same county provided that (1) he does not participate in any deliberations, discussions, negotiations, or votes concerning arrangements between the county and the sewage treatment system appeals board relating to the sewage treatment system appeals board's use, rental, or lease of county facilities, and (2) he recuses himself from any appeals before the sewage treatment system appeals board involving real property owned or leased by the county.

To: Austin B. Campbell, Vinton County Prosecuting Attorney, McArthur, Ohio

By: Michael DeWine, Ohio Attorney General, February 27, 2012

I am in receipt of your request for an opinion on whether a member of the board of county commissioners may also serve as a member of a sewage treatment system appeals board in the same county.¹ Subject to the restrictions set forth below, it is our opinion that the two positions are compatible.

The following analysis is used to determine whether a person may serve simultaneously in two public positions:

1. Is either position in the classified service for purposes of R.C. 124.57?
2. Does a constitutional provision or statute prohibit the holding of both positions at the same time?
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 that are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

See, e.g., 2011 Op. Att’y Gen. No. 2011-008, at 2-57; 2009 Op. Att’y Gen. No. 2009-018, at 2-127 to 2-128.

Discussion of R.C. 124.57

Question one of the compatibility analysis asks whether either position is in the classified service for purposes of R.C. 124.57. R.C. 124.57(A) applies to all officers and employees “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.”

¹ Sewage treatment system appeals boards are created by R.C. 3718.11, which was recently enacted by Am. Sub. S.B. 110, 128th Gen. A. (2010) (eff. Sept. 17, 2010). Each county has a sewage treatment system appeals board. R.C. 3718.11(C)(1). A sewage treatment system appeals board consists of three members—one appointed by the health commissioner of the general health district having jurisdiction in the county, one appointed by the longest serving probate judge in the county, and one appointed by the Director of the Department of Health. R.C. 3718.11(C)(1)(a)-(c).

R.C. 124.57(A) 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.” 2004 Op. Att’y Gen. No. 2004-015, at 2-124; *see also* 2011 Op. Att’y Gen. No. 2011-008, at 2-57.

The position of county commissioner is filled by popular vote. R.C. 305.01. Thus, a person serving as a member of a board of county commissioners is in the unclassified service, R.C. 124.11(A)(1), and is not subject to the prohibitions in R.C. 124.57.

Unlike the position of county commissioner, a member of a sewage treatment system appeals board established under R.C. 3718.11 is not included among the positions enumerated in R.C. 124.11(A)(1)-(31) as comprising the unclassified service. Accordingly, a brief examination of R.C. Chapter 124 is helpful.

R.C. 124.01(A) defines the “civil service” as “all offices and positions of trust or employment in the service of the state and in the service of the counties, cities, city health districts, general health districts, and city school districts of the state.” *See also* 1985 Op. Att’y Gen. No. 85-012, at 2-46 (“the Ohio civil service system includes only persons who are in the service of the state or in the service of a county, city, city health district, general health district, or city school district within the state”).² Positions in the civil service are further divided “into the unclassified service and the classified service.” R.C. 124.11; *see also* R.C. 124.11(A) (the “unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter”); R.C. 124.11(B) (the “classified service shall comprise all persons . . . not specifically included in the unclassified service”). By its terms, R.C. 124.57(A) applies to officers and employees in the classified service only.

In determining whether the position of sewage treatment system appeals board member is in the classified service for purposes of R.C. 124.57, we find guidance in the administrative rules enacted by the Department of Administrative Services. *See* 2 Ohio Admin. Code 123:1-46-02(A) (“[t]he purpose of this rule is to provide appointing authorities, personnel officers, and others with guidelines concerning political activity. Employees in the classified service are prohibited by [R.C. 124.57] from engaging in political activity”). Rule 123:1-46-02(A)(1) defines classified service, in relevant part, as “all persons in active pay status serving in the competitive classified civil service of the state, the counties, or the general health districts.”

Active pay status is defined as “conditions under which an employee is eligible to receive pay, and includes, but is not limited to, vacation leave, sick leave,

² In addition to the political subdivisions identified in R.C. 124.01(A), any township with a population in excess of ten thousand, and that has a police or fire department of ten or more full-time paid employees, may establish a civil service commission and become a civil service township. *See* R.C. 124.01(G); R.C. 124.40(B).

bereavement leave, administrative leave, compensatory time, holidays, and personal leave.” 2 Ohio Admin. Code 123:1-47-01(A)(2); *see also* R.C. 124.382(A)(2). Active pay status, therefore, connotes a person serving in a position entitled to compensation. A member of a sewage treatment system appeals board, however, serves “without compensation.” R.C. 3718.11(C)(3). Thus, a person serving as a member of a sewage treatment system appeals board cannot be in an active pay status and is not in the classified service for purposes of R.C. 124.57. *See* 2003 Op. Att’y Gen. No. 2003-041, at 2-337 (members of a county planning commission who serve without pay are excepted from the classified service for purposes of R.C. 124.57).³

Rule 123:1-46-02(A)(1) also refers to persons in the competitive classified civil service. *See also* R.C. 124.01(C) (“classified service” means “the competitive classified civil service of the state” and various political subdivisions of the state). As noted in 2003 Op. Att’y Gen. No. 2003-033, at 2-279:

Subject to various exceptions, the general scheme for making original appointments, *i.e.*, appointments other than by promotion, transfer, or reduction, to positions in the competitive classified service involves examination of applicants pursuant to R.C. 124.23(A), preparation of an eligible list by the Director of Administrative Services from the results of the examination, R.C. 124.26, and the Director’s certification of names from the eligible list to the appointing authority, R.C. 124.27. From the names certified to it by the Director, the appointing authority may make an appointment. (Footnote omitted.)

See also 1996 Op. Att’y Gen. No. 96-040, at 2-154 (“[c]lassified civil servants attain their positions through a merit system based primarily on competitive examination”). The three sewage treatment system appeals board member positions are filled not through competitive examination, but pursuant to the statutory appointment procedures in R.C. 3718.11(C)(1)(a)-(c). *See* note 1, *supra*. This further supports the conclusion that the position of sewage treatment system appeals board member is not in the classified service for purposes of R.C. 124.57. *See* 2 Ohio Admin. Code 123:1-47-01(A)(82) (defining “unclassified service,” in part, as “all offices and positions which are exempt from all examinations”).

For the reasons set forth above, a person serving as a sewage treatment system appeals board member is not subject to the prohibitions in R.C. 124.57 regarding partisan political activity.

³ A person may be an employee of the state or a political subdivision of the state even if that person is not in an active pay status. *See* 2 Ohio Admin. Code 123:1-47-01(A)(50) (“no-pay status” means “the conditions under which an employee is ineligible to receive pay, and includes, but is not limited to, leave without pay, the period an employee is receiving disability leave benefits or workers’ compensation benefits, and the employee has been disability separated”). Thus, our conclusion does not mean that an employee in a no-pay status, but in a position that is otherwise compensated, necessarily is excluded from the classified civil service.

Applicability of Constitutional Provisions or Statutes, Local Charter Provisions, Resolutions, or Ordinances, or Federal, State, or Local Departmental Regulations

Question two of the compatibility analysis asks whether a constitutional provision or statute prohibits a person from holding both positions at the same time. No constitutional provision or statute bars a person from serving simultaneously as a member of a board of county commissioners and as a sewage treatment system appeals board member.

Question six of the compatibility test asks whether any local charter provisions, resolutions, or ordinances apply. Vinton County has no charter. Whether there is an applicable local resolution or ordinance that prohibits a person from holding these two positions is a question for local officials to answer. For purposes of this opinion, it is assumed that no such local resolution or ordinance exists. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-58; 2004 Op. Att’y Gen. No. 2004-051, at 2-434.

Question seven of the compatibility test asks about the applicability of federal, state, and local departmental regulations. There is no state or federal regulation prohibiting an individual from serving simultaneously in the positions of county commissioner and sewage treatment system appeals board member. Whether an applicable local departmental regulation bars a person from holding these two positions simultaneously is a question for local officials to answer. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-67.

Subordination and Control

Question three of the compatibility test 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 electorate. *See* R.C. 305.01; 2004 Op. Att’y Gen. No. 2004-051, at 2-438. As noted previously, a sewage treatment system appeals board consists of three members—one appointed by the health commissioner of the general health district in the county, one appointed by the longest serving probate court judge in the county, and one appointed by the Director of the Department of Health. R.C. 3718.11(C)(1)(a)-(c). Thus, neither position is directly responsible for appointing or removing a person from the other position. Additionally, the positions of county commissioner and sewage treatment system appeals board member operate independently of each other, and neither is required to assign duties to or supervise the other. Therefore, 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 of the compatibility test asks whether it physically is possible for one person to perform the duties of both positions. This is a factual question that is best addressed by local officials because they may determine more accurately the time constraints and demands imposed upon the positions in question. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-59; 2004 Op. Att’y Gen. No. 2004-51, at 2-438. If

local officials determine that it is physically possible for a person to perform the duties of both positions, a person may hold both positions at the same time. It should be noted, however, that the primary duties imposed on a sewage treatment system appeals board are the holding of hearings in conjunction with an appeal and the issuance of written decisions. *See* R.C. 3718.11(C)(3)-(4). It would seem these duties are not particularly onerous and can be performed by a county commissioner without interfering with the performance of his duties on behalf of the county.

Conflicts of Interest

Question five of the compatibility test asks whether there is a conflict of interest between the two positions. “A person may not hold two public positions simultaneously if he would be subject to divided loyalties, conflicting duties, or the temptation to act other than in the public’s best interest.” 2011 Op. Att’y Gen. No. 2011-008, at 2-60.

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

2009 Op. Att’y Gen. No. 2009-005, at 2-30 (citing 2005 Op. Att’y Gen. No. 2005-023, at 2-231); *see also* 2006 Op. Att’y Gen. No. 2006-034, at 2-309.

We begin by reviewing the statutory powers, duties, and responsibilities of a sewage treatment system appeals board member. No case or Attorney General opinion has discussed R.C. 3718.11 or sewage treatment system appeals boards. Thus, it may be helpful to examine how a sewage treatment system appeals board fits within the larger context of R.C. Chapter 3718.

R.C. Chapter 3718 regulates household sewage treatment systems, R.C. 3718.01(F), and small flow on-site sewage treatment systems, R.C. 3718.01(R). For purposes of R.C. Chapter 3718, household sewage treatment systems and small flow on-site sewage treatment systems are sometimes referred to jointly as “sewage treatment systems,” R.C. 3718.01(Q), and are to be contrasted with sanitary sewerage systems regulated under R.C. Chapter 6111, R.C. 3718.01(M).

The Public Health Council—which is created within the Department of Health, R.C. 3701.02—is tasked with enacting administrative rules governing sewage treatment systems. R.C. 3718.02(A) (“[t]he public health council . . . shall adopt . . . rules . . . to administer this chapter. Rules adopted under . . . this section shall do at least all of the following”). Among other matters, the rules shall: (1)

require the appropriate board of health to approve the installation, operation, and alteration of a sewage treatment system not connected to a sanitary sewerage system, R.C. 3718.02(A)(1); (2) require a site evaluation before a sewage treatment system may be installed, R.C. 3718.02(A)(2); (3) prescribe standards for the siting, design, installation, operation, maintenance, and abandonment of sewage treatment systems, R.C. 3718.02(A)(3); (4) prescribe criteria and procedures for boards of health to issue permits for the installation, operation, and alteration of sewage treatment systems, R.C. 3718.02(A)(5); (5) require boards of health to inspect newly-installed sewage treatment systems, R.C. 3718.02(A)(6); (6) require boards of health to register installers, service providers, and septage haulers that perform work within the applicable health district, R.C. 3718.02(A)(8); and (7) prohibit a sewage treatment system from causing a public health nuisance, R.C. 3718.02(A)(20).⁴ The board of health of a local health district has the authority, if it so chooses, to adopt standards more stringent than those adopted by the Public Health Council, subject to approval by the Director of the Department of Health. *See* R.C. 3718.02(B)(1)-(4).⁵

Thus, the Public Health Council is the entity primarily responsible for establishing standards and processes relating to the siting, design, installation, operation, maintenance, and abandonment of sewage treatment systems. The day-to-day responsibility for enforcing these standards and administering these processes, however, rests with the boards of health of the local health districts. R.C. 3718.02(A)(18) further provides that property owners are entitled to notice and a hearing before the applicable board of health in any of the following circumstances:

- (a) The denial of an installation, operation, or alteration permit for a sewage treatment system;
- (b) The imposition of a condition on the installation of a sewage treatment system;
- (c) The required replacement of a sewage treatment system;
- (d) Any other final order or decision of a board of health that is

⁴ R.C. Chapter 3718 contains a grandfather provision. A sewage treatment system that was in operation prior to September 17, 2010 “shall not be required to be replaced with a new sewage treatment system under this chapter or rules adopted under it and shall be deemed approved” so long as the system does not constitute, either in its current status or with repairs, a “public health nuisance,” as determined by the applicable board of health. R.C. 3718.012. The standards for whether a sewage treatment system is a public health nuisance are set forth in R.C. 3718.011.

⁵ The State of Ohio is divided into health districts, which are classified as either city health districts or general health districts. R.C. 3709.01. Each such health district has a board of health. *See* R.C. 3709.02 (board of health of a general health district); R.C. 3709.05 (board of health of a city health district). Health districts are independent political subdivisions and not part of any county, township, or municipal government. *See, e.g.*, 2008 Op. Att’y Gen. No. 2008-017, at 2-184; 1991 Op. Att’y Gen. No. 91-016, at 2-80; 1980 Op. Att’y Gen. No. 80-087, at 2-342.

made under this chapter concerning which a property owner is claiming to be aggrieved or adversely affected.

See also R.C. 3718.11(A) (a “property owner may request a hearing with the board of health for any reason described in [R.C. 3718.02(A)(18)]”).

If a property owner wishes to appeal an adverse decision by the board of health, R.C. 3718.11 provides two options. The property owner may appeal either to the common pleas court for the county in which the property is located, R.C. 3718.11(A)(1), or to the newly-created sewage treatment system appeals board, R.C. 3718.11(A)(2). A property owner that wishes to appeal to a sewage treatment system appeals board commences the appeal by filing with the applicable board of health, R.C. 3718.11(B). The board of health then sends the appeal to the chairperson of the sewage treatment system appeals board for the county in which the board of health has jurisdiction. *Id.*⁶ Once the appeal is received, the chairperson designates a time and location for hearing the appeal. R.C. 3718.11(C)(3). A majority vote by the members of a sewage treatment system appeals board is necessary to take action on any matter. *Id.* The board has forty-five days after a hearing to issue a written decision. R.C. 3718.11(C)(4). Decisions of the board are final and no further appeal may be taken. R.C. 3718.11(D).

In sum, a sewage treatment system appeals board reviews the actions and decisions of local boards of health, and the statutory powers and duties of a sewage treatment system appeals board consist of holding hearings and issuing binding written decisions.

A board of county commissioners has numerous statutory powers and duties. *See, e.g.*, R.C. 307.01 (board shall provide offices for county officers); R.C. 307.15 (board may enter into contracts with other political subdivisions); R.C. 5705.01(C) (board is the taxing authority for the county); *see also* 2004 Op. Att’y Gen. No. 2004-051, at 2-439 to 2-440 (setting forth some of the duties of a board of county commissioners). A review of the powers, duties, and responsibilities of the positions of county commissioner and sewage treatment system appeals board member discloses potential conflicts of interest between the two positions.

The first potential conflict of interest relates to a sewage treatment system appeals board’s procurement of hearing facilities.⁷ A board of county commission-

⁶ The board member appointed by the county probate judge serves as the chairperson of the sewage treatment system appeals board. R.C. 3718.11(C)(3).

⁷ Although R.C. 3718.11 does not explicitly authorize a sewage treatment system appeals board to procure hearing facilities, such authority may be implied from the board’s obligation to conduct hearings in the first instance. *See* 2007 Op. Att’y Gen. No. 2007-001, at 2-11 (board of township trustees has the authority to undertake “incidental acts” that are necessary for the performance of its statutory duties); 2001 Op. Att’y Gen. No. 2001-029, at 2-171 n.2 (a statutory board has “such authority as is expressly conferred upon it by statute, or as may be necessarily implied in order to effect the exercise of an express power”).

ers may permit the use of public buildings for any public purpose, upon such terms as it prescribes. R.C. 307.03. Thus, it is possible that a sewage treatment system appeals board and a board of county commissioners would be negotiating, discussing, deliberating, and determining whether to approve or reject an arrangement providing a sewage treatment system appeals board access to county facilities for purposes of holding appeal hearings. An individual serving on both boards might find it difficult to exercise his discretion in a completely unbiased manner in such circumstances.

This potential conflict of interest, however, does not render the two positions incompatible. First, the potential conflict does not involve a primary function of either a county commissioner or a sewage treatment system appeals board member. Second, nothing requires a sewage treatment system appeals board to request hearing facilities from the board of county commissioners; rather, it is only speculative whether a sewage treatment system appeals board would pursue this option. Third, even if a sewage treatment system appeals board wished to obtain hearing facilities from the county, a person serving as both a county commissioner and a sewage treatment system appeals board member will be able to remove himself from any conflict of interest by abstaining from any deliberations, discussions, negotiations, or votes concerning the arrangement. *See* 2009 Op. Att’y Gen. No. 2009-018, at 2-131 (if a person serving in two positions “is able to remove himself from the conflict [of interest] by abstaining from participating in deliberations, discussions, negotiations, or votes pertaining to the conflict, the person may serve in both positions at the same time”); 2004 Op. Att’y Gen. No. 2004-051, at 2-443 to 2-444 (county commissioner who serves as a city fireman within the same county could avoid potential conflict of interest by abstaining from deliberations, discussions, and votes on a tax levy or bond issue if the city has already placed a levy or bond issue on the ballot).

The second potential conflict of interest relates to the county’s status as an owner or lessee of real property. The management and control of a county’s real property interests are vested in the board of county commissioners. *See* R.C. 307.01-.04; R.C. 307.06; R.C. 307.09-.10. Conceivably, a county could own or lease real property that has or needs a household sewage treatment system or small flow on-site sewage treatment system. Thus, a county could be subject to an adverse decision by a local board of health and wish to appeal that decision to the appropriate sewage treatment system appeals board. *Cf.* R.C. 3718.01(L) (“person” includes the state, any political subdivision, or any instrumentality of the state or a political subdivision). In that situation, a sewage treatment system appeals board member who is also a county commissioner would be in the position of hearing appeals that affect the county’s real property interests.

Again, though, consideration of the factors cited above leads to the conclusion that this potential conflict of interest is insufficient to render the two positions incompatible. While the potential conflict implicates a primary function of each position, the possibility that a board of county commissioners would ever appeal an adverse decision of a board of health to the sewage treatment system appeals board for the county, or that real property the county owns or leases would be the subject

of an appeal to the sewage treatment system appeals board, is extremely remote. Further, if an appeal involving the county came before the sewage treatment system appeals board, a board member who is also a county commissioner could abstain from hearing that particular appeal.⁸

The final potential conflict of interest arises from the relationship between a board of county commissioners and the district advisory council of the general health district having jurisdiction in the county. The president of a board of county commissioners serves as a member of the district advisory council. *See* R.C. 3709.03(A) (“[t]here is hereby created in each general health district a district advisory council” which shall include “the president of the board of county commissioners”). If the president of a board of county commissioners is “unable to attend any meeting of the district advisory council,” then the board of county commissioners “may select an alternate from among themselves . . . [who] may vote on any matter on which the member is authorized to vote.” *Id.* The district advisory council meets annually in March and may hold additional, special meetings in accordance with statute. *Id.* The district advisory council appoints four of the five members of the board of health for the general health district. R.C. 3709.03(B). Additional statutory duties of the district advisory council include “receiving and considering the annual or special reports from the board of health, and making recommendations to the board of health or to the department of health in regard to matters for the betterment of health and sanitation within the district or for needed legislation.” R.C. 3709.03(A); *see also* 1995 Op. Att’y Gen. No. 95-030, at 2-151.

As noted previously, a sewage treatment system appeals board reviews, and has the authority to affirm or reverse, decisions made by a board of health in the course of administering R.C. Chapter 3718. *See* R.C. 3718.11(A)-(C). Thus, one could argue a sewage treatment system appeals board member may find himself in the position of reviewing the decisions or actions of a district advisory council, including a county commissioner participating as either a member or alternate of the district advisory council. As a result, a person simultaneously holding the positions of county commissioner and sewage treatment system appeals board member could be subject to a conflict of interest. *See* 2007 Op. Att’y Gen. No. 2007-020, at 2-209 (a conflict of interest may arise when “an officer is responsible for supervising his own actions in another public position”).

This potential conflict of interest, however, is too remote and not immediate enough to render the positions of county commissioner and sewage treatment system appeals board member incompatible. First, while one could imagine a scenario in which a county commissioner, as either a member or alternate of a district advisory council, recommends a specific rule or standard regarding household sewage treatment systems or small flow on-site sewage treatment systems that is then adopted by a board of health, this possibility is remote. The odds of such a rule or standard being implicated in an appeal before a sewage treatment system appeals board of which the county commissioner is a member are even more remote.

⁸ As a county commissioner he also should abstain from having any involvement in the decision of which reviewing authority—the court of common pleas or the sewage treatment system appeals board—will hear the county’s appeal.

Second, there is a well-established presumption that, in the absence of evidence to the contrary, public officials will perform their duties in a regular, objective, and lawful manner. *See, e.g., State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph 10); 2011 Op. Att’y Gen. No. 2011-034, at 2-272; 2007 Op. Att’y Gen. No. 2007-023, at 2-237 to 2-238. While a district advisory council may make recommendations to a board of health, R.C. 3709.03, the board of health retains operational independence from the district advisory council and is not obligated to adopt or follow the recommendations of the district advisory council. *See* 1995 Op. Att’y Gen. No. 95-030 (syllabus, paragraph 2) (“[a] district advisory council of a general health district has no authority to make or participate in personnel decisions of a general health district, except for the power to make nonbinding recommendations”) and (syllabus, paragraph 3) (“[t]he authority to make program and policy decisions for a general health district is vested in the board of health . . . ; a district advisory council . . . has no authority to require the board of health to adopt or conform to a long range plan recommended by the district advisory council”). Thus, a sewage treatment system appeals board does not review directly the decisions or actions of a district advisory council, and there is no reason to believe a person serving as both a county commissioner and a sewage treatment system appeals board member will be incapable of exercising his duties in an objective and unbiased manner.

Conclusions

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

1. A member of a board of county commissioners may serve simultaneously as a sewage treatment system appeals board member for the same county provided that he does not participate in any deliberations, discussions, negotiations, or votes concerning arrangements between the county and the sewage treatment system appeals board relating to the sewage treatment system appeals board’s use, rental, or lease of county facilities.
2. A member of a sewage treatment system appeals board may serve simultaneously as a county commissioner for the same county provided that (1) he does not participate in any deliberations, discussions, negotiations, or votes concerning arrangements between the county and the sewage treatment system appeals board relating to the sewage treatment system appeals board’s use, rental, or lease of county facilities, and (2) he recuses himself from any appeals before the sewage treatment system appeals board involving real property owned or leased by the county.