



Ohio AG: A Person may Simultaneously Serve as County Engineer and Member of the Board of Directors of a Conservancy District in that County

October 2, 2013

Reprinted from the October 2013 BrickerConstructionLaw.com Newsletter

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In January 2013, the Ohio Attorney General (“OAG”) issued advisory opinion *2013 Op. Att’y Gen. No. 002*, determining that a person may simultaneously serve as a county engineer and a member of the board of directors of a conservancy district with territory in the same county, with some limitations. OAG opinions are recommendations of the law and while they are not binding law, the opinion would be persuasive in court.

The OAG determined that whether a person may serve concurrently in two public positions is dependent upon an analysis of seven “compatibility factors”:

1. Whether either position is a classified employment under R.C. 124.57;
2. Whether a constitutional provision or statute prohibits holding both positions at the same time;
3. Whether one position is subordinate to, or in any way a check upon, the other;
4. Whether it is physically possible for one person to discharge the duties of both positions;
5. Whether there is an impermissible conflict of interest between the two positions;
6. Whether there are local charter provisions, resolutions, or ordinances that are controlling; and
7. Whether there are federal, state, or local departmental regulations applicable.

In analyzing these factors, the OAG first found that neither position is a classified employment under R.C. 124.57. This statute prohibits an officer or employee in the classified service of the state, counties, cities, school districts and civil service townships from holding partisan political positions.

However, a county engineer is an elected official in the unclassified civil service and is therefore not subject to R.C. 124.57. Furthermore, members of conservancy district boards of directors are not subject to 124.57 because they are not in the service of the state or any county, city, school district or civil service township. Rather, they are distinct political subdivisions created to solve water quality management problems.

The OAG also determined that no constitutional provision or statute disallows the simultaneous holding of a board membership of a conservancy district and the position of county engineer.

Next, the OAG found that the positions of county engineer and board member of a conservancy district operate independently of one another. A county engineer is an elected official responsible to the electorate of the county, whereas, members of the board of directors of a conservancy district are appointed by the conservancy court, consisting of one common pleas judge for each

county with territory in the district.

The positions in no way supervise one another, are in no way responsible for appointing or removing one another, and are otherwise not subordinate to or are a check upon one another. The OAG advised that local officials should determine whether it is physically possible for one person to perform the duties of both positions. If a person chooses to serve simultaneously, they must be certain that they are able to discharge the duties in both positions in a timely and competent manner.

The OAG then noted that a person may not serve simultaneously in two positions if doing so would subject him or her to divided loyalties, conflicting duties or any other act outside the public interest. So, in order to determine whether a conflict of interest would exist, the OAG reviewed the powers, duties, and responsibilities of both the county engineer and board members of a conservancy district.

The OAG determined that while some responsibilities of the two positions may overlap, this would not be a regular occurrence. Additionally, because a county engineer would have the ability to abstain from any matter that conflicts with his position as a board member of a conservancy district, the OAG determined that conflicts can be easily avoided.

Finally, if a local resolution, ordinances or departmental regulation exist prohibiting the holding of these positions simultaneously, the OAG determined that it would be up to the local officials to resolve the incompatibility.

Accordingly, the OAG determined that a person may serve as both county engineer and member of the board of directors of a conservancy district that has territory in that county. However, he recommended the following limitations: as a conservancy board member, an individual may not participate in negotiations, discussions, other deliberations or votes relating to his or her duties as county engineer; and, as county engineer, he or she may not participate in any review, evaluation or approval of conservancy district plans or improvements or exercise any powers or duties of the conservancy district under an agreement between the county and the conservancy district.

Special thanks to summer associate Rachel Lusk for her assistance in preparing this summary.

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