



Commonwealth of Kentucky
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OAG 21-08

Subject: Whether service as a public health department director for the Wedco District Health Department or as a home health administrator for the Green River District Health Department is incompatible with service as a member of the Kentucky Retirement Systems' Board of Trustees.

Requested by: Michael Board, Executive Director, Office of Legal Services
Kentucky Public Pensions Authority

Written by: Charles A. English
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Syllabus: Because there is no constitutional prohibition, service as a public health department director for the Wedco District Health Department or home health administrator for the Green River District Health Department is not incompatible with service as a member of the Kentucky Retirement Systems' Board of Trustees.

Opinion of the Attorney General

The Kentucky Public Pensions Authority asks whether a public health department director for the Wedco District Health Department or a home health administrator for the Green River District Health Department may also serve as a member of the Kentucky Retirement Systems' Board of Trustees ("Board"). For the reasons below, it is the Attorney General's opinion that, under the facts presented

here, no incompatibility prevents the public health department director for the Wedco District Health Department or a home health administrator for the Green River District Health Department from simultaneous membership on the Board.

Background. The Board oversees the Kentucky Employees Retirement System and the State Police Retirement System. *See* KRS 61.645 and KRS 61.650 (providing for the creation of the Board of Trustees and its duties). Two applicants are seeking to fill one vacant position on the Board and to be placed on the ballot for the next election. The Board consists of nine members, six of whom are appointed by the Governor. KRS 61.645(1)(c). The remaining three members are nominated and elected by the Board. KRS 61.645(4)(a). But when a vacancy occurs, the position is filled for the duration of the unexpired term via appointment by a majority vote of the remaining elected trustees. KRS 61.645(5)(a).

One applicant is the public health director for the Wedco District Health Department. The other applicant is a home health administrator for the Green River District Health Department. The statutory provisions allowing for the creation of district health departments “enable counties within various areas of the state to join together in the formation of a district health department to improve the delivery of health services to the people.” KRS 212.820. District health departments generally administer and enforce all applicable public health laws, implement policies to safeguard the health of the people, and conduct studies and reports. *See* KRS 212.880. The Wedco District Health Department serves the public health needs of Harrison, Nicholas, Scott, and Bourbon Counties. Likewise, the Green River District Health Department serves the public health needs of Daviess, Hancock, Henderson, McLean, Ohio, Union, and Webster Counties.

Applicable law. Section 165 of the Kentucky Constitution provides the scope of constitutional incompatibility:

No person shall, at the same time, be a State officer or a deputy officer or member of the General Assembly, and an officer of any county, city, town, or other municipality, or an employee thereof; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities, except as may be otherwise provided in this Constitution[.]

Ky. Const. § 165. This Office need not address a statutory or common law incompatibility analysis because KRS 61.645(6)(a) explicitly provides that “[m]embership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists.” There can thus be no statutory or common law incompatibility in this case.

Analysis. A member of the Kentucky Retirement Systems’ Board of Trustees

is a state officer. *See, e.g.*, OAG 00-7. Thus, whether there is a constitutional incompatibility in this context turns on: (a) whether a public health department director for the Wedco District Health Department is an officer or employee of any county, city, town, or other municipality; and (b) whether a home health administrator for the Green River District Health Department is an officer or employee of any county, city, town, or other municipality.

As an initial matter, “[a] member of a county board of health is a county officer.” *Vickers v. Sory*, 102 S.W. 272, 272 (Ky. 1907). A district health department, however, is a special purpose governmental entity under KRS 65A.010(9)—not a “county, city, town, or other municipality” as those terms are used in Section 165 of the Kentucky Constitution. That is because a district health department is formed pursuant to state law under KRS 212.840, *see* KRS 65A.010(9)(b), and because it exercises less than statewide jurisdiction, exists to provide one or a limited number of services, is governed by a board, KRS 212.880, and may receive and expend public funds, grants, awards, and appropriations from the state, KRS 212.920. KRS 65A.010(9)(a); *see also* KRS 65A.010(9)(c)5 (“[E]xamples of the types of public services that may be provided by special purpose governmental entities include but are not limited to [p]ublic health, public mental health, and public hospital services[.]”); OAG 14-005.

That the district health department is a special purpose governmental entity is dispositive here because this Office has determined that an officer of a special purpose governmental entity “is not considered a state, city or county officer for purposes of Section 165 of the Kentucky Constitution or KRS 61.080.” OAG 18-001, at *1. A special purpose governmental entity is considered an “independent organization, but it is not equivalent to a municipality under the constitutional and statutory sections mentioned.” *Id.* Because a district health department is not a “county, city, town, or other municipality,” a public health department director for a district health department is not an “officer” or an “employee” of a “county, city, town, or other municipality” under the Constitution. The Constitution, therefore, does not prohibit simultaneous service as a public health department director for the Wedco District Health Department and membership on the Kentucky Retirement Systems’ Board of Trustees.

The same is true for a home health administrator for the Green River District Health Department. Because a district health department is not a county, city, town, or other municipality, the Constitution does not prohibit simultaneous service as a home health administrator for the Green River District Health Department and membership on the Kentucky Retirement Systems’ Board of Trustees.

Conclusion. For the reasons set forth above, it is the Attorney General’s opinion that Section 165 of the Kentucky Constitution does not prohibit membership on the Kentucky Retirement Systems’ Board of Trustees because of an individual’s

employment as a public health department director for the Wedco District Health Department or as a home health administrator for the Green River District Health Department.

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