August 6, 2025

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street N.W., 4th Floor
Warren, Ohio 44481-1092

SYLLABUS: 2025-014

A finance director of a city may not serve simultaneously as a township fiscal officer in a township that contracts with that city for services.

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OPINION NO. 2025-014

The Honorable Dennis Watkins
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Dear Prosecutor Watkins:

You have requested my opinion on whether a person may serve simultaneously as a township fiscal officer and as finance director of a charter municipality when the township and city have a contract in place for emergency medical services.

For the reasons that follow, I conclude that a finance director of a city may not serve simultaneously as a township fiscal officer in a township that contracts with that city for services.

I

Your question concerns the compatibility of two public positions: finance director for the City of Cortland, Ohio, and fiscal officer for Mecca Township in Trumbull County. Cortland is a charter

municipality. You have informed me that the Cortland City Council entered a three-year contract in 2023 to provide emergency medical services to Mecca Township. The township pays the city for this service. The city also has an ordinance that allows the Cortland Fire Department to respond to emergencies in neighboring communities, including Mecca Township, and to bill for its services after the event. I am told that the city finance director "had no role in the negotiation or approval of the referenced EMS contract or the mutual aid arrangement."

In November of 2024, Cortland's finance director was appointed to fill a vacancy in the office of fiscal officer for Mecca Township. She requested an advisory opinion from the Ohio Ethics Commission regarding potential conflicts of interest. The Commission advised that "[u]nder R.C. 2921.42(A)(4), a city finance director is not permitted to simultaneously serve as a township fiscal officer when the city and the township have a contract for the provision of EMS services." The opinion noted that a potential exception to R.C. 2921.42(A)(4) could apply, but only if a comparable prohibition, found in R.C. 511.13, does not apply to the fiscal officer's situation. The Ethics Commission disclaimed any authority to opine on the application of R.C. 511.13, and so you have requested my opinion on the matter.

II

In determining whether two public offices are compatible, we traditionally apply the following test:

1. Is either position in the classified services for purposes of R.C. 124.57?

2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?

3. Is one position subordinate to, or in any way a check upon, the other position?

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 2022 Ohio Atty.Gen.Ops. No. 2022-003, Slip Op. at 3-4; 2-10 to 2-11; *see also* 1979 Ohio Atty.Gen.Ops. No. 79-111, at 2-367 to 2-368.

If the answer to any of the questions above is dispositive in finding against compatibility, that suffices to end the analysis. *See, e.g.*, 2022 Ohio Atty.Gen.Ops. No. 2022-006; 2022 Ohio Atty.Gen.Ops. No. 2022-005; and 2021 Ohio Atty.Gen.Ops. No. 2021-011. In this case, the answer to the second question—whether a constitutional provision or statute prohibits the city finance director from serving in both positions at the same time—resolves the matter. R.C. 511.13 prohibits any officer or employee of a township from having an interest in a contract that the township enters regardless of whether that interest is of a fiduciary nature or a personal, pecuniary nature.

III. Prohibited Interests in Contracts

A

Return to the second question of the compatibility analysis: Does a constitutional provision or statute prohibit a person from serving in both public positions at the same time? For starters, no statute directly limits outside employment for a township fiscal officer. The city finance director's position is governed by municipal charter, and the City of Cortland's charter does not appear to prohibit outside employment for the city's finance director.

However, R.C. 511.13 prohibits any officer or employee of a township from having an interest in a contract entered into by the township. That statute reads in relevant part: "No member of the board of township trustees or any officer or employee thereof shall be interested in any contract entered into by such board." The Attorney General has long recognized that "[a] trustee, officer, or employee of a township who is employed by an entity with which the township enters into a contract has an interest in the contract for the purposes of R.C. 511.13, regardless of whether it can be demonstrated that the trustee, officer, or employee has a direct pecuniary or personal interest in the contract." 2008 Ohio Atty.Gen.Ops. No. 2008-002, at paragraph two of the syllabus; *see also* 2019 Ohio Atty.Gen.Ops. No. 2019-005, Slip Op. at 3; 2-33 to 2-34. A fiduciary interest in a contract, alone, is sufficient to invoke the statutory prohibition. Consequently, R.C. 511.13 prevents a township officer or employee from holding other employment that creates such an interest.

There are two exceptions to the blanket prohibition. First, R.C. 511.13 exempts a township officer or employee who is a party to a contract if neither is an officer nor director of a corporation but merely a shareholder of five percent or less of the corporation's stock worth $500 or less. Second, R.C. 505.011 excepts from the prohibition "a township trustee who receives compensation as a member of a private fire company that furnishes the township with fire protection services."

2008 Ohio Atty.Gen.Ops. No. 2008-002, at 2-7, citing 1990 Ohio Atty.Gen.Ops. No. 90-037, at 2-152 to 2-155. Neither exception applies here. Both the township and municipality are direct parties to the contract that obligates the city to provide emergency medical services to the township.

B

The trustees of Mecca Township have asserted that the township fiscal officer lacks decision-making authority and does not enter contracts on behalf of the township; thus, in their opinion, R.C. 511.13 should not prevent the fiscal officer from holding both positions. It is true that the township fiscal officer lacks authority to enter contracts for the township, but that is irrelevant. Recall that the law states, "[n]o member of the board of township trustees or *any* officer or employee thereof shall be interested in any contract entered into by such board." (Emphasis added.) In examining R.C. 511.13, we are mindful that "[i]n construing statutes the word 'any' is equivalent and has the force of 'every' or 'all.'" *Motor Cargo, Inc. v. Bd. of Twp. Trustees*, 52 O.O. 257, 259, 1953 Ohio Misc. LEXIS 337 (C.P. 1953); *see also* 1982 Ohio Atty.Gen.Ops. No. 82-008, at 2-28. The prohibition in R.C. 511.13 thus applies to *all* officers and employees of the township, not just those with decision-making authority.

It is also of no moment that the city finance director was not involved in the original EMS contract nor any subsequent renewals. It is correct that the mayor of Cortland is responsible for executing contracts on behalf of the city unless an ordinance provides otherwise. *See* Cortland City Charter, art. IV, §4.04(E). And you have informed me that the EMS contract was negotiated between the township trustees and fire chief, and the Cortland mayor and fire chief. If the concern was with conflicts of interest generally, this degree of removal might resolve the concern. However, prior attorneys general have concluded in several opinions that "removal from the contracting process does not avoid the R.C. 511.13 prohibition." 2021 Ohio Atty.Gen.Ops. No. 2021-011, Slip Op. at 3; 2-42; *see* 2008 Ohio Atty.Gen.Ops. No. 2008-002, at 2-12 to 2-13; *see also* 2000 Ohio Atty.Gen.Ops. No. 2000-015, at 2-91.

As one of my predecessors in office explained, "[t]he person's abstention from any discussions, negotiations, decision-making, or votes regarding the contract prior to the execution does not affect the application of R.C. 511.13 . . . once a contract has been reached." 2016 Ohio Atty.Gen.Ops. No. 2016-034, Slip Op. at 6; 2-405. To see why, compare R.C. 511.13 with the more particular requirements of R.C. 2921.42, a criminal prohibition against having an unlawful interest in a public contract. R.C. 2921.42(A)(4) prohibits a public official from knowingly "hav[ing] 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 the public official is connected." (Emphasis added.) A "public contract" includes any purchase or acquisition of property or services by a political subdivision and would apply to a contract for emergency medical services with another political subdivision. R.C. 2921.42(I)(1)(a).

The Ohio Ethics Commission, in its advisory opinion issued to the city finance director, described the city finance director's interest in the contract between Mecca Township and the City of Cortland as follows:

> [A]s the City's finance director, you are involved in collecting revenue from the Township that is generated from the contract between the City and the Township. Conversely, as the Township's fiscal officer, you would be involved in making these contractual payments to the City. As a result, if you were to serve simultaneously as the City's finance director and as the Township's fiscal officer, you would have prohibited financial and fiduciary interests in the contract. Even if you were to serve as the Township's fiscal officer without compensation, you would still have a prohibited fiduciary interest in the contract.

However, as noted in the advisory opinion, R.C. 2921.42(C) provides an exception to the criminal prohibition when the following four conditions are met:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family, or

> business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

In its staff advisory opinion to the city finance director, the Ethics Commission noted that the exception "cannot apply whenever another statute imposes a broader prohibition than R.C. 2921.42(A)(4). R.C. 511.13, which governs townships, is such a statute." This determination is dispositive: the Ethics Commission has exclusive authority to render opinions on R.C. 2921.42, including whether the exception to R.C. 2921.42(A)(4) applies to a particular circumstance. *See* R.C. 102.08(E); *see also* 1987 Ohio Atty.Gen.Ops. No. 87-025, at paragraph three of the syllabus.

Now, turn back to the comparison between R.C. 511.13 to R.C. 2921.42. As one of my predecessors concluded, no similar exception exists in R.C. 511.13. 1982 Ohio Atty.Gen.Ops. No. 82-008, at 2-30 ("Thus, it appears that R.C. 511.13 provides a broader prohibition than R.C. 2921.42, although it provides no criminal sanctions"); *see also* Ohio Ethics Comm. Advisory Op. No. 84-006, Slip Op. at 3 (following the Attorney General's interpretation of R.C. 511.13). In 2008, the Attorney General was asked to reconsider this conclusion. In a thoroughly reasoned opinion, the Attorney General found no basis to depart from past precedent. 2008

Ohio Atty.Gen.Ops. No. 2008-002, at 2-6 to 2-11. As of this date, the law remains unchanged, and again, I can find no reason to abandon past precedent.

In your opinion request, you also asked that I consider your question in light of 1993 Ohio Atty.Gen.Ops. No. 93-016. That opinion concluded that a township trustee may also be employed as an administrative assistant to the county engineer, provided, among other conditions, "that the individual, as township trustee, does not participate in negotiations or vote upon a contract entered into between the county and his township." *Id.*, at paragraph one of the syllabus. You noted that this opinion makes no reference to R.C. 511.13, which is true. However, this omission does not give us cause to re-evaluate R.C. 511.13. Rather, the opposite: without formally overruling the 1993 opinion, I would conclude that its analysis is incomplete. Whenever a township official is employed by another entity that is party to contracts with the township, R.C. 511.13 must factor into the compatibility analysis. Thus, the 1993 compatibility opinion does not change my conclusion here.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

> A person may not serve simultaneously as city finance director and as township fiscal

officer when the township contracts with that city for services.

Respectfully,



DAVE YOST
Ohio Attorney General