

**OPINION NO. 90-059****Syllabus:**

The positions of clerk-treasurer of a local school district free public library and member of the legislative authority of a village within the jurisdiction of that free public library are statutorily incompatible under R.C. 731.12, which prohibits a member of the legislative authority of a village from holding any other public office.

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**To: David P. Joyce, Geauga County Prosecuting Attorney, Chardon, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September, 7, 1990**

I have before me your request for my opinion as to whether the positions of clerk-treasurer of a local school district free public library and member of the legislative authority of a village are compatible and, specifically, whether pursuant to R.C. 731.12, an individual is prohibited from holding both positions.<sup>1</sup> Information provided indicates that the village is located within the jurisdiction of the free public library.

I note, initially, that when a board of education of a local school district has established a free public library, the administration of that library is vested in a board of library trustees. R.C. 3375.15. Said board of library trustees, pursuant to R.C. 3375.32, shall elect and fix the compensation of a clerk, who shall also perform the duties of a treasurer, R.C. 3375.36. Cf. 1947 Op. Att'y Gen. No. 2549, p. 639 (syllabus, paragraph one) ("[t]he clerk of the board of trustees of a municipal library, when elected and qualified pursuant to [G.C. 7627 (now R.C. 3375.32)]<sup>2</sup>,...becomes ex officio treasurer of all funds belonging to such library..."). The responsibilities of the clerk-treasurer are statutorily limited to financial matters involving the board of library trustees which appoints him. Cf. 1980 Op. Att'y Gen. No. 80-047 at 2-198 (the clerk-treasurer of the board of library trustees of a county library district "deals only with the financial affairs of the board"). These responsibilities include the signing of all checks issued by the free public library, R.C. 3375.35; the keeping of an account of the moneys credited to the board of library trustees and the preparing and rendering of monthly and annual financial statements, R.C. 3375.36. See also R.C. 3375.37 (a clerk-treasurer must file a statement showing the amount of funds on hand, available for expenditure by the board of library trustees, before the county auditor will give a warrant for funds due such board); R.C. 3375.38 ("[a]ll the duties required of the county auditor, county treasurer, or other officer or person relating to the moneys to the credit of or to be credited to a board of library

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<sup>1</sup> I note that you have also inquired as to the procedures which should be followed if the positions are incompatible. In a telephone conversation with a member of my staff, however, you have indicated that the legislative authority of the village has removed the individual in question from its membership, and that it is unnecessary for me to answer your second question.

<sup>2</sup> In 1953 the provisions of the entire General Code were reconsolidated and formally reenacted as the Revised Code. See 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953). Consequently, G.C. 7627 was reenacted at R.C. 3375.32.

trustees of a free public library shall be complied with by dealing with the clerk of such board").

The powers and duties of the legislative authority of a village are statutorily provided in R.C. Chapter 731 and related provisions. The members of the legislative authority of a village are vested with various powers and duties related to the administration of the village. *See, e.g.*, R.C. 731.14 (power to contract on behalf of the village, unless the village has provided for the appointment of a village administrator, pursuant to R.C. 735.271); R.C. 731.17 (power to pass ordinances and resolutions); R.C. 731.47 (management and control of the village finances and property, except as otherwise provided); R.C. 735.27 (management of the public institutions either owned, maintained, or established by the village).

Pursuant to the compatibility test set forth in 1979 Op. Att'y Gen. No. 79-111, two public positions are considered incompatible if, *inter alia*, the empowering statutes of either position limit outside employment. 1989 Op. Att'y Gen. No. 89-069 at 2-321. R.C. 731.12, which delineates the qualifications for members of the legislative authority of a village, provides, in relevant part, that "[n]o member of the legislative authority [of a village] shall hold any other public office." It must, therefore, be determined whether the position of clerk-treasurer of a local school district free public library is a public office.

In *State ex rel. Landis v. Board of Comm'rs of Butler County*, 95 Ohio St. 157, 159-60, 115 N.E. 919, 919-20 (1917), the Ohio Supreme Court stated:

The usual criteria in determining whether a position is a public office are durability of tenure, oath, bond, emoluments, the independency of the functions exercised by the appointee, and the character of the duties imposed upon him....The chief and most-decisive characteristic of a public office is determined by the quality of the duties with which the appointee is invested, and by the fact that such duties are conferred upon the appointee by law. If official duties are prescribed by statute, and their performance involves the exercise of continuing, independent, political or governmental functions, then the position is a public office and not an employment.

....  
...[I]t is manifest that the functional powers imposed must be those which constitute a part of the sovereignty of the state.

*See also, e.g., State ex rel. Milburn v. Pethel*, 153 Ohio St. 1, 90 N.E.2d 686 (1950); *Scofield v. Strain*, 142 Ohio St. 290, 51 N.E.2d 1012 (1943); 1990 Op. Att'y Gen. No. 90-014.

In light of this definition and the aforementioned responsibilities imposed upon the position of clerk-treasurer of a local school district free public library, I am of the opinion that the position of clerk-treasurer is a public office, rather than a public employment. The board of library trustees elects the clerk-treasurer, R.C. 3375.32; R.C. 3375.36, who "shall execute a bond in an amount and with surety to be approved by the board [of library trustees], payable to the board, and conditioned for the faithful performance of the official duties required of him," R.C. 3375.32. The duties of the clerk-treasurer are prescribed by statute, R.C. 3375.36 through R.C. 3375.39, inclusive, and involve functions which are of a public nature. In the discharge of these functions, which involve the custody of and responsibility for all moneys received for library purposes, an individual holding the position of clerk-treasurer serves in a position of trust and is accountable to the public for his performance. *Cf.* 1980 Op. Att'y Gen. No. 80-060 at 2-240 (the treasurer of a board of education, whose duties involve the administration and protection of public funds, "occupies a position of trust and is responsible to the public for his performance"). The duties and responsibilities imposed upon the position of clerk-treasurer, thus, involve the exercise of independent governmental functions. *See State ex rel. v. Brennan*, 49 Ohio St. 33, 38, 29 N.E. 593, 594 (1892) ("where, by virtue of law, a person is clothed, not as an incidental or transient authority, but for such time as denotes duration and continuance, with independent power to control the property of the public, or with public functions to be exercised in the

supposed interest of the people,...and the occupant having a designation or title, the position so created is a public office"); *cf.* Op. No. 80-060 at 2-240 (the position of clerk-treasurer of a board of education is a public office).

Accordingly, it is my opinion and you are hereby advised that the positions of clerk-treasurer of a local school district free public library and member of the legislative authority of a village within the jurisdiction of that free public library are statutorily incompatible under R.C. 731.12, which prohibits a member of the legislative authority of a village from holding any other public office.