

OPINION NO. 99-043**Syllabus:**

The positions of county administrator and township trustee within the same county are incompatible.

To: William E. Peelle, Clinton County Prosecuting Attorney, Wilmington, Ohio
By: Betty D. Montgomery, Attorney General, August 17, 1999

You have requested an opinion whether the positions of county administrator and township trustee are compatible. The township trustee position is located within the same county as the county administrator position.

Two public positions are incompatible when a person serving in both positions is subject to an impermissible conflict of interest. 1987 Op. Att'y Gen. No. 87-092 at 2-603; *see also* 1979 Op. Att'y Gen. No. 79-111 at 2-367 and 2-368 (setting forth seven questions for determining whether two public positions are compatible). An impermissible conflict of interest occurs when a person's "responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to influences which

may prevent his decisions from being completely objective." 1980 Op. Att'y Gen. No. 80-035 at 2-149.

In order to determine whether there is an impermissible conflict of interest between two public positions, we must examine the powers, duties, and responsibilities conferred upon each position. 1999 Op. Att'y Gen. No. 99-001 at 2-2. This examination enables us to determine whether a person who holds two public positions simultaneously will confront an impermissible conflict of interest when he exercises the powers, duties, and responsibilities in either or both positions. *Id.* at 2-2 and 2-3.

A board of township trustees is the governing body of a township. *See* R.C. Chapter 505 (setting forth the general powers of a board of township trustees). As the governing body, the board of township trustees has, *inter alia*, the power to contract for services, materials, equipment, or supplies needed to meet an emergency, R.C. 505.08, secure, maintain, and provide for solid waste facilities, R.C. 505.12, regulate engine noise and vehicle parking, R.C. 505.17, regulate the storage of junk motor vehicles, R.C. 505.173, and contract with the county for water supply improvements, R.C. 505.263. A board of township trustees is also responsible for providing for the public safety of its citizens. *See, e.g.*, R.C. 9.60 (acquisition of fire protection); R.C. 505.37 (adoption of fire regulations and purchase of fire-fighting equipment); R.C. 505.373 (adoption of a standard code pertaining to fire, fire hazards, and fire prevention); R.C. 505.43-.431 (acquisition of police protection); R.C. 505.44 (acquisition of ambulance, emergency medical, or nonemergency patient transport services); R.C. 505.73 (adoption of an existing structures code); R.C. 505.75 (adoption of a township building code); R.C. 509.01 (appointment of township constables).

In addition, a board of township trustees is vested with various fiscal and budgetary duties. The board of township trustees is authorized to appropriate township moneys to pay the township's credit card debt, R.C. 505.64, give financial assistance to agencies or organizations in order to establish and operate federal programs or programs that provide necessary social services to meet the needs of older persons, R.C. 505.70, and give financial assistance to any community improvement corporation organized under R.C. Chapter 1724, R.C. 505.701. A board of township trustees, as the township's governing body for purposes of R.C. 135.01-21 (providing for the investment of the public moneys of a subdivision),¹ R.C. 135.01(D), is also required to award the township's active deposits of public moneys to an eligible institution, R.C. 135.04(C), designate the public depositories of the public moneys of the township and award such moneys to and among the public depositories designated, R.C. 135.12, and invest the township's interim moneys, R.C. 135.14. A board of township trustees is further designated as the taxing authority of the township for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law), *see* R.C. 133.01(NN)(7); R.C. 5705.01(C). In this capacity, a board of township trustees is given responsibility for issuing securities for the purpose of providing funds with which to pay one or more final judgments rendered against the township, R.C. 133.14, issuing securities for the purpose of paying all or any portion of the costs of any permanent improvement that the township is authorized to acquire, improve, or construct, R.C. 133.15, preparing the township's annual tax budget, R.C. 5705.28, and levying tax levies, R.C. 133.56; R.C. 5705.03; R.C. 5705.19; *see also* R.C. 505.20; R.C. 505.29; R.C. 505.39; R.C. 505.56.

¹ Pursuant to R.C. 135.01(L), a township is a "subdivision" for purposes of R.C. 135.01-.21.

A county administrator is appointed by the board of county commissioners to serve as the administrative head of the county under the direction and supervision of the board. R.C. 305.29. The powers and duties of a county administrator, as set forth in R.C. 305.30, include assisting in the administration, enforcement, and execution of the policies and resolutions of the board of county commissioners, supervising and directing the activities of the affairs of the divisions of county government, preparing and submitting reports to the board of county commissioners, preparing and submitting the county budget, contracting on behalf of the board of county commissioners, allowing and paying claims for goods received and services rendered, and performing personnel functions. A county administrator must also perform such additional duties as assigned by the board of county commissioners. R.C. 305.30(J).

Our review of the powers, duties, and responsibilities of the respective positions discloses that a person who serves simultaneously as a county administrator and township trustee within the same county is subject to a conflict of interest because of competition for tax moneys. Both a county and a township must prepare, adopt, and submit an annual tax budget to the county budget commission. R.C. 5705.28-32. *See generally* R.C. 5705.01(A) (defining both a county and a township as a "subdivision" for purposes of R.C. Chapter 5705). After the annual tax budgets are submitted, the county budget commission revises and adjusts the estimate of balances and receipts from all sources for each fund within the county's and township's tax budget, R.C. 5705.32; *see* R.C. 5705.31, and adjusts the levies of the county and township within the limits of the law, R.C. 5705.31. Because revisions and adjustments made by the county budget commission directly affect the amount of inside millage generated by the unvoted property tax the county and township receive, the county and township are permitted to have a representative appear before the county budget commission to explain the financial needs of the county and township. R.C. 5705.32(E)(2).

A board of township trustees is the taxing authority for the township, and is required to prepare the township's tax budget. R.C. 5705.28. Although a board of county commissioners, as the taxing authority of a county, R.C. 5705.01(C), is required to prepare and submit the county's tax budget to the county budget commission, R.C. 5705.28, R.C. 305.30(F) requires the county administrator to keep the board fully advised on the financial conditions of the county and to prepare and submit the county's budget to the board of county commissioners. In addition, the board of county commissioners may request the county administrator to assist in the preparation and presentation of the county's annual tax budget to the county budget commission. *See* R.C. 305.30(J). If a person were to prepare and explain both a township's and county's tax budget to the county budget commission, the person could be subject to influences that would prevent him from making completely objective, disinterested decisions. 1999 Op. Att'y Gen. No. 99-027 at 2-182 explained this conflict as follows:

If the same person prepares both the county's and city's tax budgets and explains them to the county budget commission, a conflict of interest is present because he must advocate a position on behalf of one to the potential detriment of the other. *See* 1993 Op. Att'y Gen. No. 93-048 at 2-236. An argument that the county or city is entitled to a certain level of funds means a reduced level of funds are available for the other's use. Accordingly, the competition for advantageous budget decisions could subject a person who holds the positions of assistant prosecuting attorney and member of the legislative authority of a city to influences that may prevent him from making completely objective decisions. *See* 1996 Op. Att'y Gen. No. 96-008 at 2-33; 1993 Op. Att'y Gen. No. 93-048 at 2-236.

It is well settled that the mere fact that a person who holds two public positions simultaneously is subject to a potential conflict of interest does not automatically render the two positions incompatible. 1979 Op. Att'y Gen. No. 79-111 at 2-372. Instead, the immediacy of the conflict must be determined, and where the potential for conflict is remote and speculative, the conflict of interest rule is not violated. 1998 Op. Att'y Gen. No. 98-017 at 2-88 and 2-88; 1979 Op. Att'y Gen. No. 79-111 at 2-372. Factors used in determining the immediacy of a conflict include the remoteness of the conflict, the ability of the person to remove himself from the potential conflict, whether the person exercises decision-making authority in both positions, whether the potential conflict involves the primary functions of each position, and whether the conflict involves budgetary controls. 1979 Op. Att'y Gen. No. 79-111 at 2-372.

A review of the immediacy of the potential conflicts of interest that a person who serves concurrently in the positions of township trustee and county administrator faces reveals that the conflicts are not remote and speculative. As stated previously, a township trustee and a county administrator are responsible for preparing the township's and county's budgets, respectively. *See* R.C. 305.30(F); R.C. 5705.28. The handling of funding and budgetary matters thus is a primary statutory function of a township trustee and a county administrator that must be attended to regularly. The preparation of a township's or county's budget also requires the exercise of decision-making authority and involves budgetary controls. Finally, it is impractical for either a township trustee or a county administrator to continually remove himself from funding and budgetary matters since such matters arise regularly. There are only three members of a board of township trustees, R.C. 505.01, and there is only one county administrator, R.C. 305.29. Accordingly, a person who simultaneously holds, within the same county, the positions of township trustee and county administrator is subject to an impermissible conflict of interest because of the competition for tax moneys.

Based on the foregoing, it is my opinion, and you are hereby advised that the positions of county administrator and township trustee within the same county are incompatible.