

December 17, 2021

The Honorable Zachary A. Corbin
Brown County Prosecuting Attorney
740 Mount Orab Pike, Suite 1
Georgetown, Ohio 45121

SYLLABUS:

2021-029

A person cannot simultaneously serve as a township trustee and board-of-education member for a local school district when the local school district serves the township. (1985 Op. Att'y Gen. No. 85-006, followed.)



DAVE YOST

OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 25th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

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OPINION NO. 2021-029

The Honorable Zachary A. Corbin
Brown County Prosecuting Attorney
740 Mount Orab Pike, Suite 1
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Dear Prosecutor Corbin:

You have requested an opinion regarding the compatibility of the following two positions: board-of-education member for a local school district, and township trustee within the same jurisdiction. I have framed your question as follows:

Can a local-school-board member also serve as a township trustee for a township completely within the jurisdiction of the served local school district?

The answer is “no.” A person cannot simultaneously serve as a local-school-board member and as a township trustee for a township completely within the jurisdiction of the served local school district.

I

When a person wishes to simultaneously hold two or more public-service positions, the question arises whether those positions are compatible. 1979 Op. Att’y Gen. No. 79-111 established a seven-question test for determining if two or more positions are compatible. Those questions are:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local department regulation applicable?

1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368. Here, question five is dispositive.

II

A person may not serve simultaneously in two positions when an impermissible conflict of interest exists between the positions.” *E.g.*, 2021 Op. Att’y Gen. No. 027, Slip Op. at 2. “A conflict of interest exists ‘when an individual’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.” *Id.*, quoting 1989 Op. Att’y Gen. No. 89-052, at 2-220. Here, there is just such a conflict.

Both a board of township trustees and a board of education for a local school district are designated “taxing authorities” for their respective subdivisions. *See* R.C. 5705.01(C). According to R.C. 5705.28, R.C. 5705.30, and R.C. 5705.31, these taxing authorities are responsible for adopting and submitting a tax budget to the county auditor who then submits it to the board of county commissioners. The county budget commission examines the submitted tax budgets and then makes the necessary modifications in order to bring the required tax levies within the limits of the law. *See* R.C. 5705.32; *see also* R.C. 5705.31; *see also* 1990 Op. Att’y Gen. No. 90-083, at 2-355. And “[t]he determination of the budget commission directly affects the potential revenue of each subdivision.” 1990 Op. Att’y Gen. No. 90-083, at 2-355, quoting 1989 Op. Att’y Gen. No. 89-007, at 2-29.

This shows that the different taxing authorities are in positions adverse to one another. *See* 1990 Op. Att’y Gen. No. 90-083, at 2-355. Given the adverse positions, “[a]n individual who serves simultaneously as a member of two taxing authorities, which compete for the same funds, ‘would be faced with a conflict of interest while preparing the budget of each subdivision, since in both positions he would be attempting to obtain the greatest possible share of the available funds, at the expense of the other subdivisions.’” 1990 Op. Att’y Gen. No. 90-083, at 2-355, quoting 1981 Op. Att’y Gen. No. 81-010, at 2-33. Despite R.C. 5705.31(D), which

establishes a minimum allocation of funds to a school district, the fact that the positions you ask about are adverse to one another with respect to some budget concerns requires me to conclude that an impermissible conflict of interest exists. *See e.g.*, 1988 Op. Att’y Gen. No. 88-011, at 2-42. Such a conflict of interest warrants a finding of incompatibility because such a conflict involves divided loyalties. *See e.g.*, 1990 Op. Att’y Gen. No. 90-083, at 3-356.

Other impermissible conflicts of interest may also arise. *See* 1990 Op. Att’y Gen. No. 90-083, at 3-356 (Because the board of township trustees and the board of education for a city school district are partially-coextensive subdivisions, other conflicts of interest in addition to the submission of a budget exist). For instance, both taxing authorities may place a levy on the ballot for taxes in excess of the ten-mill limitation. *See* R.C. 5705.07; *see also* R.C. 5705.19, *et seq.*; *see also* R.C. 5705.21, *et seq.* Also, both taxing authorities may submit to electors the question of whether to issue any general obligation bond under R.C. Chapter 133. *See* R.C. 133.18. If both the township trustees and local school board choose to place levies on the ballot at the same time, a person serving both taxing authorities would suffer from divided loyalties. *See* 1990 Op. Att’y Gen. No. 90-083, at 2-356. These conflicts are conceivable and create additional conflicts of interest. *See id.*

In sum, a person simultaneously serving as a township trustee and as a board-of-education member for a local school district that serves the trustee’s township labors under an impermissible conflict of interest. Since the conflicts involve the primary duties of each position

and because the conflicts over tax money and possible budget decisions would arise each year, it would not be practical for an individual to routinely be excused from such matters. *See* 1990 Op. Att’y Gen. No. 90-083, at 2-358. As such, the two positions are incompatible.

My predecessor, it should be noted, reached the same conclusion regarding the same two positions in an opinion from 1985. *See* 1985 Op. Att’y Gen. No. 85-006; *see also* 1966 Op. Att’y Gen. No. 66-060; *see also* 1949 Op. Att’y Gen. No. 951, p. 598. The 1985 opinion, it is true, relied on a now-amended version of R.C. 5731.48. While the amendment cured a compatibility problem that the 1985 opinion addressed, it did not make any changes that cured the compatibility problems addressed above.

Conclusion

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

A person cannot simultaneously serve as a township trustee and board-of-education member for a local school district when the local school district serves the township. (1985 Op. Att'y Gen. No. 85-006, followed.)

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style with a large initial "D" and a long, sweeping tail.

DAVE YOST
Ohio Attorney General