

April 19, 2022

The Honorable James R. Flaiz  
Geauga County Prosecuting Attorney  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, OH 44024

SYLLABUS:

2022-006

A person may not serve simultaneously as a local school district board member and a commissioner of a county park board if the school district is in the same county as the park board.



**DAVE YOST**

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OPINION NO. 2022-006

The Honorable James R. Flaiz  
Geauga County Prosecuting Attorney  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, OH 44024

Dear Prosecutor Flaiz:

You have requested an opinion on the compatibility of someone simultaneously holding two public positions. I have framed your questions as follows:

- (1) May a person simultaneously serve as a local school district board member and as a commissioner of a county park board when both boards are located in the same county?
- (2) If a person may serve in both positions, are there any restrictions on either position?

For the reasons that follow, in response to your first question, I find that a person may not serve simultaneously as a local school district board member (“school board member”; “school board”) and as a commissioner of a county park board (“park board commissioner”; “park board”). Because these positions are incompatible, I do not need to answer the second question.

I

An issue of compatibility arises whenever one person seeks to simultaneously hold two or more positions of public service. The following seven questions are used to determine if two positions are compatible:

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?

2021 Op. Att’y Gen. No. 2021-027, Slip Op. at 1-2; 2-97; 1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368. All seven questions must be resolved in favor of compatibility for the positions to be compatible. Here, the

answer to question five, regarding conflicts of interests, is dispositive.

## II

Question five addresses impermissible conflicts of interest. “A person may not serve simultaneously in two positions when an impermissible conflict of interest exists between the positions.” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 2; 2-105. “A conflict of interest does occur...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.’” 1989 Op. Att’y Gen. No. 89-052, at 2-220, quoting 1985 Op. Att’y Gen. No. 85-100, at 2-427.

Applying these principles, I determine that multiple conflicts of interests exists when one person seeks to serve as both a school board member and a park board commissioner within the same county.

## A

The first conflict of interest is related to the acquisition and disposition of land.

Both the park board and the school board have statutorily afforded powers to acquire land by gift, purchase, lease-to-purchase, or pursuant to the appropriation procedures outlined in R.C. 163.01 *et seq.* R.C. 1545.11;

R.C. 1545.15; R.C. 3313.37; R.C. 3313.39; *see also* 1983 Op. Att’y Gen. No. 83-020 at 2-75, *citing generally* 1978 Op. Att’y Gen. No. 78-045 (R.C. 1545.11 applies to all park districts, and not only those created prior to April 16, 1920); *see also State ex rel. Coles v. Granville*, 116 Ohio St.3d 231, 2007-Ohio-6057, 877 N.E.2d 968, ¶26-29. Each board is afforded additional means of acquisition: the school board may exchange property it owns for other property that it identifies as necessary for school purposes, R.C. 3313.41(F), and the park board is able to annex “territory adjacent and contiguous to the existing park district” if it is found to be “conducive to the general welfare” and approved by the probate court. R.C. 1545.15. While developing and improving the lands it acquires, the park board “may assess such a portion of the cost of such development or improvement as it deems equitable, not to exceed fifty per cent of such total cost, upon abutting, contiguous, adjacent, or otherwise specifically benefited lands.” R.C. 1545.18. The park board and school board are also empowered to dispose of real property, at times to one another, if it is deemed unnecessary to their respective missions. R.C. 1545.12 and 3313.41.

The conflict here arises because both boards have clear, competing interests in the acquisition and annexation of real property. Though the park board’s decisions to acquire or dispose of land require approval by the probate court before they are adopted by the board itself and its decisions to annex land are subject to notice and

hearing procedures, the discussion, deliberation, and voting on real property decisions are done by the park board. R.C. 1545.03; R.C. 1505.04; R.C. 1545.11; R.C. 1545.12(C); R.C. 1545.15. With one individual serving as a park board commissioner and a school board member, it is feasible that this will result in divided loyalties, whether it is regarding the necessity of a piece of land for either board or the decision to assess fees on an adjacent piece of property or incur them. *See* 1963 Op. Att’y Gen. No. 130, at 218.

## B

The second conflict arises out of each boards’ authority to contract with the other.

In pursuit of developing, protecting, and improving land, the park board has the ability to, “by agreement with the legislative or other public authority in control of parks or park lands...[,] assume control of all or a portion of any existing parks or park lands or otherwise contract or cooperate with such public authority in connection with the use, development, improvement, and protection of parks or park lands.” R.C. 1545.14. Similarly, the school board is authorized to “cooperate with...boards, or other public officials having the custody and management of public parks... and public buildings and grounds of whatever kind in providing for educational, social, civic, and recreational activities, in buildings and upon grounds in the custody and

under the management of such... boards, or other public officials.” R.C. 3313.59.

It is foreseeable that contracts or agreements would be entered into between the school board for the use, improvement, and protection of park lands. R.C. 1545.14; R.C. 3313.59; 1988 Op. Att’y Gen. No. 88-033, at 2-149 (“presumably pursuant to R.C. 1545.14, the township and county park board share some services. In effect, then, an individual who served as both township trustee and commissioner of the park board would have interests on two sides of a contract”).

Further, the controlling statutes pertaining to the disposal of real property lay out provisions for specific dealings with each other: the park board is required to first offer to sell its land to political subdivisions of the state, which includes the school district, and the school board is explicitly able to sell land over \$10,000 to the park board. R.C. 1545.12(B)(2); R.C. 3313.41(C); 2000 Op. Att’y Gen. No. 2000-025, at 2-169 (because a board of township trustees could convey real property to a park district, a person serving as both township trustee and office manager for the park district “would be subject to influences that could prevent him from making completely objective decisions as a township trustee and park district office manager”).

Previous opinions have consistently held that “conflicts of interest may...arise because a member of the board

of education may be required to deliberate, discuss, negotiate, or vote on a contract between the board” and another entity. 2004 Op. Att’y Gen. No. 2004-025, at 2-229; 1988 Op. Att’y Gen. No. 88-011, at 2-43 (stating that “a conflict would arise if the county and local school district contract with one another”); *see also* 2000 Op. Att’y Gen. No. 2000-025, at 2-169. The ability for the park board and school board to contract with one another exposes the individual on both boards to be a party on each side of the contract, presenting a significant conflict of interests and impediment to objectivity.

### C

The third conflict pertains to the authority to levy taxes and issue securities.

For the purposes of tax levies, school districts are considered “subdivisions” with their boards as “taxing authorities” and park districts fall in the catchall category of “taxing unit.” R.C. 5705.01(A); R.C. 5705.01(C); R.C. 5705.01(H); *see also* R.C. 1545.20; R.C. 1545.21; R.C. 1545.211; R.C. 1545.24. Both the school board, as a taxing authority of a subdivision, and the park district, as a taxing unit, are authorized to levy taxes. R.C. 5705.03(B)(1); R.C. 5705.194; R.C. 5705.199; R.C. 1545.20; R.C. 1545.21.

Under R.C. 133, which governs public securities, the park board and school board are defined as “subdivisions” and “taxing authorities,” and may issue bonds and notes in anticipation of collecting on property tax revenues under R.C. 133.10. R.C. 133.01(MM)(3); R.C. 133.01(MM)(20); *see also* 1983 Op. Att’y Gen. No. 83-020, at 2-74 to 2-75, citing *Village of Willoughby Hills v. Bd. of Park Commrs.*, 3 Ohio St.2d 49, 209 N.E.2d 162 (1965) (stating that park districts are political subdivisions); R.C. 133.01(NN)(3); R.C. 133.01(NN)(9).

With each board empowered to place levies and the question of issuing securities on the ballot for the same electors, a conflict would arise over both tax revenue and the collection of funds via bonds or notes in anticipation of the levies. 2021 Op. Att’y Gen. 2021-029, at Slip Op. 4; 2-106; 1988 Op. Att’y Gen. No. 88-011, at 2-43; *see also* 2012 Op. Att’y Gen. No. 2012-008, at 2-56 to 2-57 (“an individual serving as a member of a board of county commissioners and member of a board of township trustees of a township located within the same county might hesitate to approve placing a county levy on the ballot for fear that the voters in the township would reject the township levy in favor of the county levy, or vice versa”).

## D

The fourth conflict exists regarding the county budget commission and its allocation of funds.

My predecessors have stated that “where the same person participates in the preparation of two such budgets, there may be a conscious or unconscious bias or prejudice on his part.” 2011 Op. Att’y Gen. 2011-029, at 2-238, citing 2004 Op. Att’y Gen. No. 2004-025, at 2-227.

Annually, both the park district board and school district board appear and present their budgets before the county budget commission. As taxing units within a county “must share in the amount of inside millage available,” the districts that each board represents compete for finite tax monies generated. *Id.* The county budget commission reviews and then modifies, if necessary, proposed levies presented to ensure that they remain within the ten-mill limit, which necessarily implies that the “determination of the budget commission directly affects the potential revenue” of each taxing entity. 2022 Op. Att’y Gen. No. 2022-005, Slip Op. at 4, citing 1990 Op. Att’y Gen. No. 90-083, at 2-355. R.C. 5705.28 and 5705.31. This competition has long been considered by previous opinions as a serious, recurring conflict of interest. 2011 Op. Att’y Gen. No. 2011-048, at 2-383; *see also* 2011 Op. Att’y Gen. No. 2011-029, at 2-238 to 2-239.

## E

I must finally determine if there is a way to avoid or eliminate the aforementioned conflicts. Several factors must be considered when determining whether the conflicts identified render positions incompatible: “the probability of the conflicts occurring, the ability of the

person to remove himself from any conflicts that may occur, whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters.” 2021 Op. Att’y Gen. No. 2021-002, Slip Op. at 6, 2-10 to 2-11, quoting 2004 Op. Att’y Gen. No. 2004-051, at 2-439. In light of these factors, I conclude that the conflicts are unavoidable.

Succinctly stated, “[s]ince 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.” 2021 Op. Att’y Gen. No. 2021-029, Slip Op. at 4-5; 2-106, *see also* 1990 Op. Att’y Gen. No. 90-083, at 2-358.

As the county budget commission meets annually to consider budgets prepared by the boards, this potential conflict “is not remote.” 1992 Op. Att’y Gen. No. 1992-053, at 2-218; 2011 Op. Att’y Gen. No. 2011-029 at 2-239; 1963 Op. Att’y Gen. No. 130. It is also clear that transacting in real property and entering partnerships to use public land are primary functions of each board; though, without knowing the frequency with which land acquisition or inter-agency contracting arises for both the park board and school board, the remoteness of this conflict may vary from district to district. 2000 Op. Att’y Gen. No. 2000-25, at 2-170.

While “it is well established that a public official has a duty to abstain from voting on any matter that would impair his objectivity,” 1997 Op. Att’y Gen. No. 97-026, at 2-155, this is only practicable if the board “is capable

of functioning and performing its statutory duties when one of its members abstains from a matter.” 2004 Op. Att’y Gen. No. 2004-025, at 2-228; *also compare* 2020 Op. Att’y Gen. No. 2020-001, Slip Op. at 4, 2-3 to 2-4 (concluding that an individual employed as a county auditor’s sole commercial property appraiser cannot abstain from appraising commercial property in his township within the county because he is the only individual able to execute this function) *with* 2006 Op. Att’y Gen. No. 2006-041, at 2-407 (“...a person who serves as a county commissioner and member of the board of elections is able to remove herself...because both [boards] are capable of functioning and performing their statutory duties when one of their members abstains from participating in a matter”).

Due to the multiple and repeating conflicts of interest that arise with the primary functions of both the park and school boards, and the prospect of continually refraining from decision-making, which would undeniably impact the fulfillment of statutory duties, I conclude that these two positions are incompatible. *See* 2022 Op. Att’y Gen. No. 2022-05, Slip Op. at 11; 2021 Op. Att’y Gen. No. 2021-018, Slip Op. at 4; 2-66 (“since the conflict of interest here is clear and of repeating occurrence, I find that the conflict cannot be avoided or sufficiently mitigated”).

Conclusion

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

A person may not serve simultaneously as a local school district board member and a commissioner of a county park board if the school district is in the same county as the park board.

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