

September 8, 2016

The Honorable Keller J. Blackburn
Athens County Prosecuting Attorney
1 South Court Street
Athens, Ohio 45701

SYLLABUS:

2016-031

1. A person may serve simultaneously as director of a county department of job and family services and member of a village legislative authority provided that no contract exists between the county department of job and family services and the village and provided that, as a member of the village legislative authority, the person does not participate in any deliberations, discussions, negotiations, or votes concerning agreements with the county department of job and family services and does not participate in any discussions or votes on tax levies or bond issues for additional funding for the village if the board of county commissioners has placed a tax levy on the ballot to fund the operations of the county department of job and family services. If the salary of the director of the county department of job and family services is paid completely, directly or indirectly, by federal loans or grants, and the director is a "State or local ... employee" as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), a person may serve simultaneously as director of a county department of job and family services and member of a village legislative authority only if the person seeks election to the office of member of a village legislative authority in a nonpartisan election.
2. A person may serve simultaneously as director of a county department of job and family services and member of a board of township trustees provided that no contract exists between the county department of job and family services and the township and provided that, as a member of the board of township trustees, the person does not participate in any deliberations, discussions, negotiations, or votes concerning agreements with the county department of job and family services and does not

participate in any discussions or votes on tax levies or bond issues for additional funding for the township if the board of county commissioners has placed a tax levy on the ballot to fund the operations of the county department of job and family services. If the salary of the director of the county department of job and family services is paid completely, directly or indirectly, by federal loans or grants, and the director is a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), a person may serve simultaneously as director of a county department of job and family services and member of a board of township trustees only if the person seeks election to the office of member of a board of township trustees in a nonpartisan election.



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OPINION NO. 2016-031

The Honorable Keller J. Blackburn
Athens County Prosecuting Attorney
1 South Court Street
Athens, Ohio 45701

Dear Prosecutor Blackburn:

We have received your request whether the position of director of a county department of job and family services (“CDJFS”) is compatible with service as a member of a village legislative authority or board of township trustees within the same county. Whether two public offices or positions are compatible depends upon the answers to the following seven questions:

1. Is either position in the classified civil service of the state, a county, a city, a city school district, or a civil service township as defined in R.C. 124.57?
2. Do any constitutional provisions or the governing statutes of either position prohibit or otherwise limit employment in another public position or the holding of another public office?
3. Is one of the positions subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to perform the duties of both positions?
5. Is there a conflict of interest between the two positions?
6. Are there any controlling local charter provisions, resolutions, or ordinances?
7. Does a federal, state, or local departmental regulation prevent a person from holding both positions?

See 2014 Op. Att’y Gen. No. 2014-045, at 2-391 (“[a] seven-question compatibility test is used to determine whether a person may serve simultaneously in multiple public positions”); 2004 Op. Att’y Gen. No. 2004-019, at 2-153 to 2-154 (setting forth the seven-part compatibility test); 1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368 (the seven-part compatibility test applies to the simultaneous holding of a public office and a public employment by the same person). All of these questions “must yield answers in favor of compatibility in order to conclude that two positions are compatible.” 2013 Op. Att’y Gen. No. 2013-008, at 2-78.

Question One: Classified Civil Service

The first question of the compatibility analysis asks whether either of the two positions in question is in the classified civil service of “the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state” within the meaning of R.C. 124.57.¹ R.C. 124.57(A); *see also* 2006 Op. Att’y Gen. No. 2006-041, at 2-394. R.C. 124.57(A) states that an officer or employee in the classified civil service of “the state, the several counties, cities, ... city school districts ... or the civil service townships of the state,” shall not “be an officer in any political organization or take part in politics other than to vote ... and to express freely political opinions.” R.C. 124.57(A) “prohibits an officer or employee in the classified service from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service.” 2006 Op. Att’y Gen. No. 2006-041, at 2-394 to 2-395 (quoting 2003 Op. Att’y Gen. No. 2003-041, at 2-336).

The classified civil service comprises “all persons in the employ of the ... several counties” unless specifically included in the unclassified civil service. R.C. 124.11(B); *see also* R.C. 124.11(A)(32) (“[t]he unclassified service shall comprise ... [e]mployees placed in the unclassified service by another section of the Revised Code”). Pursuant to R.C. 329.02, “[e]ach director [of a CDJFS] appointed on or after October 5, 1987, shall be in the unclassified civil service and serve at the pleasure of the board [of county commissioners].” *See also* R.C. 124.11(A)(22) (“[t]he unclassified service shall comprise ... [c]ounty directors of job and family services as provided in [R.C. 329.02]”). It is our understanding that the director of the Athens County Department of Job and Family Services was appointed by the Athens County Board of Commissioners immediately preceding the time at which he began his service as the director of the Athens County Department of Job and Family Services in January 2015. Therefore, in this instance, the director of the Athens County Department of Job and Family Services is in the unclassified service under R.C. 329.02 and not subject to the prohibition in R.C. 124.57.

The prohibition in R.C. 124.57 also does not apply to a member of a village legislative authority or board of township trustees. R.C. 124.57(A) restricts partisan political activity for employees in the classified civil service “of the state, the several counties, cities, and city school districts ..., or the civil service townships of the state.” The statute does not prohibit an officer of a village or a township that is not a civil service township from participating in partisan

¹ The civil service in Ohio is divided into the classified and unclassified service. R.C. 124.11; *see also* Ohio Const. art. XV, § 10. An individual employed in the classified civil service possesses a statutory claim of qualified entitlement to continued employment, whereas an individual employed in the unclassified civil service may be dismissed without cause, provided that the dismissal is not otherwise unlawful. *See* 1996 Op. Att’y Gen. No. 96-040, at 2-154.

political activity.² See 2013 Op. Att’y Gen. No. 2013-034, at 2-344; 2003 Op. Att’y Gen. No. 2003-041, at 2-337 (“[R.C. 124.57] does not apply ... to officers and employees in the service of a township that is not a civil service township”). R.C. 124.57(A) also does not prohibit partisan political activity for a trustee of a township that is a civil service township. 2011 Op. Att’y Gen. No. 2011-034, at 2-266 (“[a]s an elected public officeholder, a township trustee is not in the classified service”). R.C. 124.11(A)(1) explicitly excludes “officers elected by popular vote” from the classified civil service. A township trustee is an officer elected by vote in a general election. See R.C. 505.01. Accordingly, the first question of the compatibility analysis may be answered in favor of compatibility.

Question Two: Constitutional or Statutory Provisions that Prohibit or Limit Employment in another Public Position or Holding another Public Office

The second question of the compatibility analysis asks whether there are any constitutional provisions or statutes applicable to either position that prohibit or otherwise limit employment in another public position or the holding of another public office. See 2A Ohio Admin. Code 123:1-46-02(E) (“[e]mployees in the unclassified service of the state, are not prohibited from engaging in political activity unless specifically precluded by federal or state constitutional or statutory provisions”). A member of a village legislative authority is prohibited by R.C. 731.12 from holding “any other public office.” Therefore, if the position of director of a CDJFS is a public office, the director may not, under R.C. 731.12, serve simultaneously as a member of a village legislative authority.³

The term “public office” is not defined for the purpose of R.C. 731.12 or more generally for purposes of R.C. Chapter 731 (organization of municipal government) or R.C. Title 7 (municipal corporations). See *State ex rel. Scarl v. Small*, 103 Ohio App. 214, 215, 145 N.E.2d 200 (Portage County 1956) (“[n]either the Constitution of Ohio nor the Code defines ‘public office’”). “The usual criteria considered in determining whether a position is a public office are durability of tenure, oath, bond, emoluments, independence of the functions exercised by the appointee, and character of the duties imposed upon the appointee.” 2011 Op. Att’y Gen. No. 2011-021, at 2-173 (citing *State ex rel. Landis v. Bd. of Comm’rs of Butler Cnty.*, 95 Ohio St. 157, 159-60, 115 N.E. 919 (1917)); see also 2013 Op. Att’y Gen. No. 2013-008, at 2-78. The following characteristics are the most decisive in determining whether a position is a public office: (1) the position requires the individual to exercise independent public duties, a part of the

² “‘Civil service township’ means any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees and which has a civil service commission established under [R.C. 124.40(B)].” R.C. 124.01(G).

³ A village that adopts a charter pursuant to Article XVIII, § 7 of the Ohio Constitution may include a provision in the charter that establishes qualifications for serving as a member of the village legislative authority that differ from those in R.C. 731.12.

sovereignty of the state; (2) the exercise of these duties are by virtue of the individual's election or appointment to the position in question; and (3) the individual is not subject to the direction and control of a superior officer in the exercise of these duties. *See* 2011 Op. Att'y Gen. No. 2011-021, at 2-174; 1963 Op. Att'y Gen. No. 3548, p. 58, at 61.

An examination of the statutes that govern the employment, duties, and responsibilities of a director of a CDJFS leads us to conclude that this position is not a public office.⁴ A director of a CDJFS is appointed by the board of county commissioners pursuant to R.C. 329.01. Provisions in R.C. Chapter 329 confer upon the director duties and powers related to the provision of assistance to individuals and families, including, but not limited to, preparing the annual budget estimate of the CDJFS, R.C. 329.02, appointing necessary employees, *id.*, certifying "in-home aides to provide publicly funded child care," R.C. 5104.12(A), and adopting rules that facilitate the administration of the services provided by the CDJFS.⁵ *See, e.g.,* R.C. 329.03(E); R.C. 329.12(E).

A director of a CDJFS also has "full charge" of the CDJFS. R.C. 329.02. A CDJFS may employ necessary employees, R.C. 329.022, perform duties assigned to the CDJFS by the Ohio Department of Job and Family Services ("ODJFS"), Ohio Department of Medicaid, the Governor, or by resolution of the board of county commissioners, R.C. 329.04(A)(1), (6); R.C. 5162.031(A)(2), "[a]dminister disability financial assistance," R.C. 329.04(A)(2), and "[c]ooperate with state and federal authorities in any matter relating to family services," R.C. 329.04(A)(4).

A director of a CDJFS does not exercise independent, sovereign authority in administering the duties and powers conferred upon the CDJFS. *See generally* 2001 Op. Att'y Gen. No. 2001-036, at 2-217 (sovereign functions include continuing, independent, political, or governmental functions). R.C. 329.02 states that the director of a CDJFS "shall have full charge of the [CDJFS]" "*u*nder the control and direction of the board of county commissioners."

⁴ Although a director of a county department of job and family services is required to give bond for the faithful performance of the duties of his position, R.C. 329.01, the requirement to give bond is not a factor that conclusively renders a position a public office. *See* 2006 Op. Att'y Gen. No. 2006-012, at 2-100 ("while an oath, bond and compensation are usually elements in determining whether a position is a public office they are not always necessary.... 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*" (quoting *State ex rel. Landis v. Bd. of Comm'rs of Butler Cnty.*, 95 Ohio St. 157, 159, 115 N.E. 919 (1917))).

⁵ A director of a county department of job and family services ("CDJFS") may also serve as the executive director of a children services board that is a public children services agency for a county. *See* R.C. 5153.10. In this instance, the Athens County Director of Job and Family Services does not serve as the executive director of the Athens County Children Services Board.

(Emphasis added.) R.C. 329.04(B) states that “[t]he powers and duties of a [CDJFS] are, and shall be exercised and performed, under the control and direction of the board of county commissioners.”

R.C. 329.02 also authorizes a board of county commissioners to enter into a written contract with the director that specifies the “terms and conditions of the director’s employment,” including the process by which the director may be terminated. *See also* 2014 Op. Att’y Gen. No. 2014-045, at 2-390 (“[t]he director [of a CDJFS] ... serves at the pleasure of the board of county commissioners” and “is responsible for overseeing the day-to-day operations of the [CDJFS] ‘[u]nder the control and direction of the board of county commissioners’” (quoting R.C. 329.02)). As recognized by one Ohio appellate court, “[i]f the individual is an employee, as indicated by an employment contract or by being subject to the direction and control of someone else, then the person does not hold a public office.” *See State ex rel. Grenig v. Cuyahoga Cnty. Bd. of Mental Retardation*, 93 Ohio App. 3d 98, 100, 637 N.E.2d 954 (Cuyahoga County 1994). Based upon the nature and characteristics of the position of director of a CDJFS, we conclude that a director of a CDJFS is not a public office for the purpose of R.C. 731.12.

R.C. 731.12 also prohibits a member of a village legislative authority from having an interest in any contract with the village. R.C. 511.13 imposes the same prohibition with respect to a member of a board of township trustees, stating that “[n]o member of the board of township trustees ... shall be interested in any contract entered into by such board.” An impermissible interest in a contract with a village or township exists within the meaning of R.C. 731.12 and R.C. 511.13 when a person serving as a member of a village legislative authority or board of township trustees is employed by an entity that has entered into a contract with the township or village. *See* 2008 Op. Att’y Gen. No. 2008-002 (syllabus, paragraph 2) (“[a] trustee ... of a township who is employed by an entity with which the township enters into a contract has an interest in the contract for purposes of R.C. 511.13, regardless of whether it can be demonstrated that the trustee ... has a direct pecuniary or personal interest in the contract”). *Cf.* 1973 Op. Att’y Gen. No. 73-043, at 2-167 to 2-168. The person’s abstention from any discussions, negotiations, decision-making, or votes regarding the contract prior to its execution does not affect the application of R.C. 511.13 and R.C. 731.12. *See* 2008 Op. Att’y Gen. No. 2008-002, at 2-12 to 2-13. When the township or village in which the person serves as a member of the board of township trustees or the village legislative authority enters into a contract with an entity by which the person also is employed, the person has an impermissible interest in the contract within the meaning of R.C. 511.13 or R.C. 731.12 notwithstanding whether he abstained from discussing, negotiating, making decisions about, or voting on the contract prior to its execution. *Id.* Thus, a director of a CDJFS that serves simultaneously as a member of a village legislative authority or board of township trustees has an interest in a contract with the village or township proscribed by R.C. 731.12 and R.C. 511.13 if the CDJFS enters into a contract with the village or township.

We understand that in this instance, the CDJFS has not entered into a contract with a village or township in which the director of the CDJFS also serves as a member of the village legislative authority or board of township trustees. Nevertheless, if, at a later date, the CDJFS

enters into a contract with a village or township in which the director of the CDJFS serves as a member of the village legislative authority or board of township trustees, the person serving simultaneously in those positions will find himself in violation of R.C. 731.12 or R.C. 511.13. *See* R.C. 731.12 (“[n]o member of the legislative authority [of a village] shall ... be interested in any contract with the village.... Any member who ceases to possess any of such qualifications ... shall forfeit the member’s office”); 2007 Op. Att’y Gen. No. 2007-044, at 2-440 to 2-441 (“if a person enters into an ongoing multi-year contract to supply a township with garage storage facilities ... and is subsequently elected to the office of township trustee, the person is prohibited by R.C. 511.13 from serving as township trustee and continuing to have an interest in that ... contract.... Although some statutes that prohibit interests in public contracts specify the consequences that follow if public officials have an interest in contracts of the public bodies they serve, R.C. 511.13 does not specify the consequences of having an interest in a contract in violation of R.C. 511.13. Because no consequences are prescribed by statute, the trustees, county prosecuting attorney, and courts may have some discretion in determining how to address” a situation in which a township trustee has an interest in a contract in violation of R.C. 511.13).

No other constitutional or statutory provisions limit the outside employment of a member of a village legislative authority, a member of a board of township trustees, or a director of a CDJFS. Therefore, the second question of the compatibility analysis may be answered in favor of compatibility.

Question Three: Subordination and Control

The third question of the compatibility analysis asks whether one of the positions is subordinate to, or in any way a check upon, the other. A member of a village legislative authority and member of a board of township trustees are elected public officeholders. R.C. 505.01; R.C. 731.09. As elected officials, a member of a village legislative authority and member of a board of township trustees are responsible to their respective electorates, and perform the duties imposed upon them by Ohio law. *See* 2014 Op. Att’y Gen. No. 2014-032, at 2-279 (“[a] township trustee, as an elected official, is responsible to the township’s electorate”); 1989 Op. Att’y Gen. No. 89-069, at 2-317 (“[a] village council member as an elected official, R.C. 731.09, is directly responsible to the people who elected him”).

A director of a CDJFS is appointed by the board of county commissioners and subject to the direction and control of the board of county commissioners. R.C. 329.01-.02; R.C. 329.04(B); *see also* 2011 Op. Att’y Gen. No. 2011-008, at 2-59. A director of a CDJFS operates independently of a member of a village legislative authority or board of township trustees. A director of a CDJFS is not accountable or subordinate to a member of a village legislative authority or board of township trustees, nor is a member of a village legislative authority or board of township trustees accountable or subordinate to a director of a CDJFS. A director of a CDJFS is not responsible for assigning duties to, or supervising the activities of, a member of a village legislative authority or board of township trustees. A member of a village legislative authority or board of township trustees is not responsible for assigning duties to, or supervising

the activities of, a director of a CDJFS. Accordingly, question three of the compatibility analysis may be answered in favor of compatibility.

Question Four: Physical Possibility

The fourth question of the compatibility analysis asks whether it is physically possible for one person to perform the duties of both positions. “Whether an individual is physically able to adequately perform the duties of both positions is a question of fact which is best answered by the parties involved.” 1993 Op. Att’y Gen. No. 93-016, at 2-89. In 2004 Op. Att’y Gen. No. 2004-019, at 2-157 to 2-158, we offered the following guidance for determining whether a person is physically able to perform the duties of both positions:

[I]n order to serve simultaneously [in both positions], a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner. This means that there should not be a direct conflict between the times when the person is needed to perform duties on behalf [of both positions].

Without any evidence to the contrary, we will presume for the purpose of this opinion that one person is physically able to perform simultaneously the duties of a director of a CDJFS and the duties of a member of a village legislative authority or board of township trustees.

Question Five: Conflict of Interest

The fifth question of the compatibility analysis asks whether there is a conflict of interest between the two positions. A person may not hold two public positions simultaneously if a conflict of interest exists. 2012 Op. Att’y Gen. No. 2012-040, at 2-351. A conflict of interest exists if the duties and responsibilities of one position are of such a nature as to influence the performance of the duties and responsibilities of the other position, “thereby subjecting [the person] to influences which may prevent [the person’s] decisions from being completely objective.”⁶ 2006 Op. Att’y Gen. No. 2006-041, at 2-397 (quoting 1980 Op. Att’y Gen. No. 80-035, at 2-149); *see also* 1993 Op. Att’y Gen. No. 93-016, at 2-89; 1979 Op. Att’y Gen. No. 79-111, at 2-371. As explained in 1979 Op. Att’y Gen. No. 79-111:

[O]ne in the public service “owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public.”

⁶ As the Ohio Ethics Commission is authorized to determine the applicability of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43, R.C. 102.08, the Attorney General “refrain[s] from interpreting and applying [those] provisions by way of a formal opinion.” 2011 Op. Att’y Gen. No. 2011-008, at 2-60 n.1. For a determination of whether those provisions apply to the positions at issue in this opinion, we recommend that you contact the Ohio Ethics Commission. *Id.*

1979 Op. Att’y Gen. No. 79-111, at 2-371 (quoting 1970 Op. Att’y Gen. No. 70-168, at 2-336). Whether a person who serves simultaneously as a director of a CDJFS and a member of a village legislative authority or board of township trustees is subject to a conflict of interest requires an examination of the duties and responsibilities of each position. *See* 2004 Op. Att’y Gen. No. 2004-044, at 2-380.

A director of a CDJFS possesses and exercises duties and powers related to public welfare and the provision of human services. R.C. 329.02; *see also* 2011 Op. Att’y Gen. No. 2011-008, at 2-61; 2004 Op. Att’y Gen. No. 2004-031, at 2-278 to 2-279. A director of a CDJFS prepares the department’s annual budget estimate, R.C. 329.02, appoints employees, *id.*, and adopts rules as authorized by various provisions of the Revised Code. *See, e.g.*, R.C. 329.03(E); R.C. 329.12(E). A director of a CDJFS may also supervise functions or programs such as a workforce development agency, county-operated nursing facility, and county tuberculosis control department, 14B Ohio Admin. Code 5101:9-1-16(C), and serves on a county family and children first council organized under R.C. 121.37(B)(1)(d).

A director of a CDJFS also has “full charge” of the CDJFS. R.C. 329.02. Various provisions in the Revised Code confer upon a CDJFS numerous duties and responsibilities related to the provision of public aid and assistance to individuals and families. *See, e.g.*, R.C. 329.04(A); R.C. 5101.54(A)(8)(e) (administration of federal food stamp program); R.C. 5101.60-.71 (program on elder abuse); R.C. 5101.80-.801 (administration of federal programs under the temporary assistance for needy families block grant); R.C. 5115.04 (performance of administrative functions for disability financial assistance program); *see also* 2011 Op. Att’y Gen. No. 2011-008, at 2-60. A CDJFS is responsible for, among other things, administering financial assistance, R.C. 329.04(A)(2); R.C. 329.042, making voter registration applications available to persons applying for assistance, R.C. 329.051, entering into cooperative agreements with the board of county commissioners and other government entities “to enhance ... family services duties,” R.C. 307.983, and performing duties assigned to the CDJFS by the ODJFS, Ohio Department of Medicaid, the Governor, or by resolution of the board of county commissioners. *See, e.g.*, R.C. 329.04(A)(1), (6); R.C. 329.04(B); R.C. 329.05; R.C. 5162.031(A)(2); *see also* 2004 Op. Att’y Gen. No. 2004-031, at 2-279 (“[t]he [CDJFS] is given the responsibility of performing duties assigned by the [ODJFS] regarding the provision of public family services, including the expenditure of funds and provision of services under various federal programs”). A CDJFS may enter into contracts to carry out its numerous functions. *See, e.g.*, R.C. 329.04(A)(1)(c) (a CDJFS that is designated as the child support enforcement agency may contract with other government or private entities to perform child support enforcement services authorized by Title IV-D of the “Social Security Act”); R.C. 5101.622 (authorizing a CDJFS to enter into a contract with a person or government entity to perform particular duties otherwise conferred upon a CDJFS); R.C. 5107.541 (“[a] [CDJFS] may contract with the chief administrator of a nonpublic school or with” certain school district boards of education “to provide for a participant of the work experience program who has a minor child enrolled in the ... school ... to be assigned under the work experience program to volunteer or work for compensation at the school in which the child is enrolled”); R.C. 5107.50 (a “[CDJFS] shall develop and administer the [Ohio works first] program and may utilize the services of

private or government entities under contract with the [CDJFS] in operating the program”); R.C. 5153.16(C)(2)(a)(i) (a CDJFS may contract with a county public children services agency “for the purpose of assisting the agency with its duties”); 12 Ohio Admin. Code 5101:1-3-12.5(B)(3) (authorizing a CDJFS to “utilize the services of private and governmental entities under contract with the [CDJFS] in operating” a job search and readiness program); 12 Ohio Admin. Code 5101:1-5-60(A)(3) (authorizing a CDJFS to enter into written contracts with attorneys and non-attorneys with expertise in representing individuals applying for or in receipt of disability financial assistance who also may be eligible for supplemental security income); 13 Ohio Admin. Code 5101:2-16-35(K)(1)-(2) (authorizing a CDJFS to contract with child care providers for certain purposes); 14A Ohio Admin. Code 5101:4-3-37(A)(1) (authorizing each CDJFS to provide or procure job development services through a contract or agreement with another agency or provider); *see also* 2004 Op. Att’y Gen. No. 2004-031, at 2-279 (“[t]o carry out its functions, the [CDJFS] is authorized to enter into numerous types of contracts and cooperative agreements”). A director of a CDJFS, having “full charge” of the CDJFS, may enter into contracts on the department’s behalf. *See* R.C. 329.02 (conferring upon a director of a CDJFS “full charge” of the CDJFS); *see also* 2004 Op. Att’y Gen. 2004-031, at 2-279 (“[t]he county director of job and family services, having full charge of the [CDJFS], may act on behalf of the department in entering into ... contracts and agreements”).

A member of a village legislative authority or board of township trustees is responsible for the management and governance of the village or township. *See generally* R.C. Title 7 (municipal corporations); R.C. Title 5 (townships); 1994 Op. Att’y Gen. No. 94-013, at 2-60 (“[t]ownship trustees are statutorily vested with various powers and duties associated with the government of the township”); 1991 Op. Att’y Gen. No. 91-036, at 2-191 (“[i]n general, members of the legislative authority of a village perform duties related to the government of the village”). A village legislative authority or a board of township trustees has the authority to enter into contracts on behalf of the village or township, *see, e.g.*, R.C. 9.60; R.C. 307.15; R.C. 505.37; R.C. 505.50; R.C. 701.07; R.C. 715.02; R.C. 717.01(A), (V); R.C. 731.14; R.C. 5549.04, acquire and dispose of real and personal property, *see, e.g.*, R.C. 505.10; R.C. 505.26; R.C. 719.01; R.C. 721.01; R.C. 723.121; R.C. 743.01, and construct and maintain buildings for village or township purposes, *see, e.g.*, R.C. 505.26; R.C. 717.01(B), (F), (K), (O), (S)(1), (AA); R.C. 715.30; R.C. 715.16(A). The legislative authority of a village or the board of township trustees has the authority to pass ordinances or resolutions,⁷ *see, e.g.*, R.C. 504.04; R.C. 505.371; R.C. 519.02; R.C. 731.17; R.C. 755.14, and to levy taxes upon the real and personal property in the village or township for the benefit of the village or township electorate, *see* R.C. 5705.01(C); R.C. 5705.03(A). As the taxing authority for the village or township, the village legislative authority or board of township trustees is responsible for adopting the village’s or township’s tax budget and submitting the tax budget to the county budget commission in accordance with the provisions in R.C. Chapter 5705. R.C. 5705.01(C); R.C. 5705.28(A).

⁷ A municipal corporation may enact ordinances and adopt resolutions, but a board of township trustees may only adopt resolutions.

A review of the powers and duties of a director of a CDJFS, a member of a village legislative authority, and a member of a board of township trustees discloses several potential conflicts of interest. First, a conflict of interest may arise for a person serving simultaneously in the position of director of a CDJFS and the office of member of a village legislative authority or board of township trustees if the CDJFS seeks to enter into an agreement with the village or township. *Cf.* 2011 Op. Att’y Gen. No. 2011-008, at 2-62 (addressing this conflict of interest with regard to the position of director of a county department of job and family services and a member of a charter city council). A director of a CDJFS that serves simultaneously as member of a village legislative authority or board of township trustees may find it difficult to maintain objectivity in deliberating, discussing, negotiating, or making decisions about an agreement that may affect the CDJFS and the village or township in which he serves. *Cf. id.*

The mere existence of a conflict of interest, however, does not automatically render two positions incompatible. When “the possibility of conflict is remote and speculative” and can be mitigated or avoided, “the conflict of interest rule is not violated.” 1993 Op. Att’y Gen. No. 93-016, at 2-91; *see also* 2004 Op. Att’y Gen. No. 2004-019, at 2-158 (“[w]here it can be demonstrated that the conflicts may be sufficiently avoided or eliminated entirely, the person may serve in both positions”).

The factors used in making this determination include, but are not limited to, “the probability of the conflict[] arising, the ability of the person to remove himself from any conflicts that may arise, whether the person exercises decision-making authority in each position, and whether the conflicts relate to the primary functions of each position or to financial or budgetary matters.”

2011 Op. Att’y Gen. No. 2011-048, at 2-382 (quoting 2011 Op. Att’y Gen. No. 2011-029, at 2-235).

Upon a consideration of those factors, we conclude that the foregoing conflict of interest is remote and speculative and can be sufficiently mitigated so as to avoid incompatibility. No statute requires a CDJFS to enter into a contract with a village legislative authority or a board of township trustees, and vice versa. Thus, the possibility that a village or township will enter into any agreements with a CDJFS is merely speculative. *Cf.* 2011 Op. Att’y Gen. No. 2011-008, at 2-62 (“it is only speculative whether a city and a county department of job and family services will enter into any such agreements”). Furthermore, a director of a CDJFS does not have final decision-making authority with respect to an agreement entered into between the CDJFS and a village or township. Any action undertaken by a director of a CDJFS, including the execution of a contract on behalf of the CDJFS, is subject to the control and direction of the board of county commissioners. R.C. 329.02 (“[u]nder the control and direction of the board of county commissioners, the county director of job and family services shall have full charge of the [CDJFS]”); R.C. 329.04(B) (“[t]he powers and duties of a county department of job and family services are, and shall be exercised and performed, under the control and direction of the board of county commissioners”); 2004 Op. Att’y Gen. No. 2004-031, at 2-284 (“[i]n authorizing the [CDJFS] and its director to exercise powers and duties relating to family services duties or

workforce development activities, the board of county commissioners must maintain control and direction over the department and the director”). The board of county commissioners serves as a check upon the actions taken by a director of a CDJFS in administering any such agreements, thereby preventing “any undue influence that the director who also serves as a [a member of a village legislative authority or board of township trustees] might exert.” 2011 Op. Att’y Gen. No. 2011-008, at 2-63. Moreover, there is a presumption that public officers and employees perform their duties in a regular and lawful manner in the absence of any evidence to the contrary. *See State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph 10) (“[i]n the absence of evidence to the contrary, public officials, administrative officers, and public authorities, within the limits of the jurisdiction conferred upon them by law, will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully”).

A member of a village legislative authority or board of township trustees has final decision-making authority with respect to agreements entered into by the village or township. However, a member of a village legislative authority or board of township trustees who also serves as the director of a CDJFS may avoid an impermissible conflict of interest between the two positions by abstaining, in his role as member of the village legislative authority or board of township trustees, from any deliberations, discussions, negotiations, or votes concerning an agreement between the village or township and CDJFS. *Cf.* 2011 Op. Att’y Gen. No. 2011-008, at 2-62 to 2-63 (recognizing that a city council member who serves as director of a CDJFS will be able to refrain from participating in deliberations, discussions, negotiations, or votes concerning an agreement between the city and department). A village legislative authority or board of township trustees is capable of functioning and performing the duties conferred upon it by statute when one of its members abstains from a matter. *See* R.C. 505.01 (a board of township trustees is composed of three members); R.C. 731.09 (the legislative authority of a village is composed of six or five members); *State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d 47, 48, 212 N.E.2d 604 (1965) (“[i]n the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur”); 2001 Op. Att’y Gen. No. 2001-036, at 2-220 (recognizing that when presented with a conflict of interest, a member of a village legislative authority may remove himself from any deliberations, discussions, negotiations, or votes related to the conflict); 1999 Op. Att’y Gen. No. 99-004 (two trustees constitute a quorum that is qualified to take action on behalf of the board). Therefore, this conflict of interest does not render the position of director of a CDJFS incompatible with the office of member of a village legislative authority or board of township trustees.⁸

⁸ We caution, however, that in the event a CDJFS enters into a contract with a village or township in which the director of the CDJFS serves as a member of the village legislative authority or board of township trustees, the position of director of a CDJFS is incompatible with the office of member of a village legislative authority or board of township trustees under R.C. 511.13 and R.C. 731.12. *See* R.C. 511.13 (“[n]o member of the board of township trustees ...

A second conflict of interest exists with respect to competition for tax dollars derived from taxes levied within the ten-mill limitation, commonly referred to as “inside millage.”⁹ *See generally* 2016 Op. Att’y Gen. No. 2016-012, at 2-120 (“[r]evenue derived from taxes levied within the ten-mill limitation is commonly referred to as inside millage”). The taxing authority of each village, township, and other subdivision within the county, including the county itself, is required to “adopt a tax budget for the next succeeding fiscal year.” R.C. 5705.28(A); *see also* R.C. 5705.01(A) (including any county, municipal corporation, or township within the meaning of “subdivision” as used in R.C. Chapter 5705). *But see* R.C. 5705.281 (a county budget commission, by majority vote, may waive the requirement that a subdivision adopt a tax budget). A tax budget estimates each subdivision’s anticipated expenditures and receipts, including the amount of money each subdivision will require from the general property tax. *See* R.C. 5705.29 (listing the information each taxing unit shall include in its tax budget); *see also* R.C. 5705.09 (requiring each subdivision to establish certain funds into which tax revenues may be deposited and from which expenditures may be made). The county budget commission reviews each tax budget and adjusts the amounts each tax budget estimates will be required from the general property tax so as to bring the tax levies required therefor within the ten-mill limitation and other limitations specified in R.C. 5705.01 to R.C. 5705.47. *See* R.C. 5705.32(A). The amount of money required by each subdivision, as shown in the subdivision’s tax budget, affects the amount of inside millage that will be allocated to every other subdivision in the county. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-64. The amount of inside millage allocated to each subdivision dictates the amount of money that will be available for use by the subdivision’s various departments, agencies, and offices.

As the taxing authority for a village or a township, a village legislative authority or a board of township trustees is responsible for adopting and submitting a tax budget on behalf of the village or township. *See* R.C. 5705.01(C). A board of county commissioners is the taxing authority for a county. *Id.* A director of a CDJFS is required to “prepare the annual budget estimate of the [CDJFS] and submit it to the board [of county commissioners].” R.C. 329.02. The annual budget estimate of the CDJFS is included in the tax budget of the county. The tax budgets submitted by the county and all of the villages or townships within the county compete for the limited inside millage available. Accordingly, a director of a CDJFS who also serves as a

shall be interested in any contract entered into by such board”); R.C. 731.12 (“[n]o member of the [village] legislative authority shall ... be interested in any contract with the village”).

⁹ The total amount of state and local taxes levied on real property may not exceed ten mills on each dollar of the property’s true value in money, except for those taxes that have been specifically authorized to be levied in excess thereof. Ohio Const. art. XII, § 2; R.C. 5705.02; *see also* 2005 Op. Att’y Gen. No. 2005-043, at 2-449 (“[t]axes levied by various taxing units may include both taxes within the 10-mill limitation (unvoted taxes) and taxes outside the 10-mill limitation (taxes authorized by the voters)”). A mill is a tenth part of one cent. *Black’s Law Dictionary* 1008 (7th ed. 1999). This rule is known as the “ten-mill limitation.” *See* R.C. 5705.02.

member of a village legislative authority or board of township trustees may find it difficult, as both the director and member of a village legislative authority or board of township trustees, to maintain objectivity in completing the competing budgetary tasks required of him in each of those positions.

Although this conflict of interest relates to financial and budgetary matters, we conclude that this conflict of interest also is not sufficient to render the position of director of a CDJFS incompatible with the office of member of a village legislative authority or board of township trustees. A director of a CDJFS prepares an annual budget estimate for the CDJFS, which is included in the overall tax budget for the county. R.C. 329.02; R.C. 5705.29. The compilation and adoption of the county's tax budget is completed by the board of county commissioners. R.C. 5705.01(C); R.C. 5705.28. The director of a CDJFS "does not exercise independent decision-making authority in the preparation and presentation of" the county's annual tax budget. 2011 Op. Att'y Gen. No. 2011-008, at 2-65. Accordingly, any undue influence a director of a CDJFS might exert in preparing the annual budget estimate for the CDJFS may be tempered by the actions taken by the board of county commissioners in compiling and adopting the tax budget that is submitted to the county budget commission for examination. *Id.* ("[t]he board of county commissioners ... has the opportunity to counter any undue influence that the director may have exerted in preparing the county department of job and family services' tax budget estimate").

Adopting a village or township tax budget is one of the primary duties of a village legislative authority or board of township trustees. *See* 1990 Op. Att'y Gen. No. 90-083, at 2-358. It is not practical for a member of a village legislative authority or board of township trustees to abstain from discussing or making decisions about the compilation or adoption of a village or township tax budget. A board of township trustees is composed of three members and the legislative authority of a village is composed of five or six members. *See* R.C. 505.01; R.C. 731.09. In the course of addressing the compatibility of a member of a board of township trustees and a member of a board of education of a city school district, a prior opinion of the Attorney General recognized:

[t]he potential conflicts of interest over competition for tax moneys and possible budget decisions would arise each year, since budget and funding matters come before both the board of education and the board of township trustees on an annual basis. Since there are only three members of the board of township trustees ... and five members of the city board of education, ... it would, as a practical matter be laborious for the person in question, to remove himself from the conflicts by abstaining from taxing and budgetary matters.

1990 Op. Att'y Gen. No. 90-083, at 2-358.

Nevertheless, any undue influence that a member of a village legislative authority or board of township trustees might exert in compiling and adopting a village or township tax budget may be mitigated by the role that the other members of the village legislative authority or board of township trustees play in the process. 2011 Op. Att'y Gen. No. 2011-008, at 2-65 to 2-

66 (the city’s “annual tax budget must be approved by the entire council, of which the person who also serves as director of the [CDJFS] is only one voting member”); *see also generally State ex rel. Speeth v. Carney*, 163 Ohio St. 159 (syllabus, paragraph 10) (there is a presumption that a member of a village legislative authority or board of township trustees will perform his duties in a regular and lawful manner in the absence of contrary evidence). Further, a tax budget adopted by a village or township is subject to further review, adjustment, and approval by the county budget commission. 2011 Op. Att’y Gen. No. 2011-008, at 2-66. A village legislative authority or board of township trustees does not have the final power to determine the amount of inside millage that the village or township eventually will receive.¹⁰

Accordingly, based upon the foregoing mitigating factors, we conclude that a director of a CDJFS may serve simultaneously as a member of a village legislative authority or board of township trustees notwithstanding that the job duties of those positions may require a person to discuss, compile, or adopt tax estimates or budgets that compete for tax moneys generated within the ten-mill limitation.¹¹ *Cf.* 2011 Op. Att’y Gen. No. 2011-008, at 2-66.

A third potential conflict exists with respect to competition for tax dollars in excess of the ten-mill limitation. A CDJFS is funded, in part, by appropriations made by the board of county commissioners. *See* R.C. 329.02 (requiring the director of a CDJFS to prepare an annual budget estimate of the CDJFS and submit it to the board of county commissioners); R.C. 5705.28-.38; *see also* 2005 Op. Att’y Gen. No. 2005-025, at 2-263 (a CDJFS established under R.C. 329.01 is funded primarily by or through the county). Pursuant to R.C. 5705.191, when “the amount of taxes that may be raised within the ten-mill limitation ... will be insufficient to provide an

¹⁰ “R.C. 5705.31(D) ... requires a county budget commission to approve a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or other taxing unit that existed during the last five years the fifteen-mill limitation was in effect (the period of 1929 through 1933).” 2016 Op. Att’y Gen. No. 2016-012, at 2-122. If any inside millage is left unallocated after the county budget commission approves the minimum levy and other mandated levies as required by R.C. 5705.31(A)-(E), the county budget commission—not the taxing authority of any subdivision—“has broad discretion to allocate the non-mandated, or ‘free’ millage among the subdivisions.” 2016 Op. Att’y Gen. No. 2016-012, at 2-122 n.9.

¹¹ Before the county budget commission makes final determinations with respect to the tax budgets, representatives of each subdivision may appear before the commission to explain the subdivision’s financial needs. R.C. 5705.32(E)(2). A director of a CDJFS who also serves as a member of a village legislative authority or board of township trustees within the same county should not be designated by the county or by the village or township to present the tax budget for the county, village, or township to the county budget commission. Presenting a tax budget to the county budget commission that competes with another subdivision’s tax budget is a significant conflict of interest that would render the positions of director of a CDJFS and a member of a village legislative authority or board of township trustees incompatible. 2011 Op. Att’y Gen. No. 2011-008, at 2-66.

adequate amount for the necessary requirements of the” county, the board of county commissioners may levy a tax in excess of the ten-mill limitation “to supplement the general fund for the purpose of making appropriations for,” among other things, “human or social services” or “welfare.”

A village legislative authority or board of township trustees, as the taxing authority of a village or a township, is authorized to place levies on the ballot for taxes in excess of the ten-mill limitation and to submit bond issues to village or township electors when the amount of money generated by taxes levied within the ten-mill limitation will be insufficient to fund the purposes of the village or township. R.C. 133.18; R.C. 5705.01(C); R.C. 5705.07; R.C. 5705.19. If a board of county commissioners has placed a tax levy on the ballot to fund the operations of the CDJFS, and a village legislative authority or board of township trustees within the same county contemplates asking the voters for additional funding, a person serving simultaneously as a member of the village legislative authority or board of township trustees and director of the CDJFS may find it difficult to remain objective and disinterested in contemplating whether to submit a village or township tax levy to electors, for fear that the county levy may be rejected in favor of the village or township levy. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-66 to 2-67; 2007 Op. Att’y Gen. No. 2007-023, at 2-241. As we recognized in 2011 Op. Att’y Gen. No. 2011-008, at 2-67 (quoting 1988 Op. Att’y Gen. No. 88-011, at 2-43), “[q]uestions of competing concerns before the electorate may be critical in determining whether or when a board might consider bringing requests for additional taxes before the voters.”

We conclude that this conflict of interest also does not render the positions of director of a CDJFS and member of a village legislative authority or board of township trustees incompatible. The instances should be infrequent in which a board of county commissioners places an issue on the ballot to fund the operations of a CDJFS at the same time a village or township in which the director also serves as a member of the village legislative authority or board of township trustees places a tax levy or bond issue for additional funding on the ballot. 2011 Op. Att’y Gen. No. 2011-008, at 2-67 (“it is unlikely that a city and county will both have a tax levy or bond issue on the same ballot every election”); 2007 Op. Att’y Gen. No. 2007-023, at 2-241 (“[i]t is unlikely that both the village and township will have a tax levy or bond issue on the same ballot every election. Thus, deliberations, discussions, or votes by the legislative authority of the village concerning the placement of a tax levy or bond issue for additional funding on the ballot when the township has previously placed such a levy or bond issue on the ballot will be infrequent”).

Moreover, a director of a CDJFS does not exercise direct or final decision-making authority with respect to levying a tax pursuant to R.C. 5705.191. The officers responsible for determining whether to levy such a tax are the county commissioners. *See* R.C. 5705.191. Although a member of a village legislative authority or board of township trustees is directly responsible for authorizing levies in excess of the ten-mill limitation on behalf of a village or a township, a member of a village legislative authority or board of township trustees who also serves as a director of a CDJFS is able to abstain from participating in deliberations, discussions, and votes on a village or township tax levy or bond issue for additional funding when the county

has already placed a tax levy on the ballot to fund the operations of the CDJFS. 2011 Op. Att’y Gen. No. 2011-008, at 2-67; 2004 Op. Att’y Gen. No. 2004-025, at 2-228.

A person serving simultaneously as a director of a CDJFS and member of a village legislative authority or board of township trustees may be subject to conflicts of interest. The conflicts of interest, as discussed above, are remote and speculative. In the event conflicts of interest do arise, the conflicts can be sufficiently mitigated or avoided. Accordingly, question five of the compatibility analysis may be answered in favor of compatibility.

Questions Six: Local Charters, Resolutions, and Ordinances

Question six of the seven-part compatibility test ask whether any local charter provisions, resolutions, or ordinances limit the holding of outside public employment by a director of a CDJFS, member of a village legislative authority, or member of a board of township trustees. Whether any local charter provisions, resolutions, or ordinances apply is a matter of local concern. *See* 1996 Op. Att’y Gen. No. 96-062, at 2-252; 1993 Op. Att’y Gen. No. 93-016, at 2-85; 1979 Op. Att’y Gen. No. 79-111, at 2-368. We presume in this instance, having received no information to the contrary, that no local charter provisions, resolutions, or ordinances prohibit one person from holding the position of director of a CDJFS and the office of member of a village legislative authority or board of township trustees.

Question Seven: State, Federal, or Local Departmental Regulations

Question seven of the compatibility analysis asks whether any state, local, or federal departmental regulations limit the holding of outside public employment by a director of a CDJFS, member of a village legislative authority, or member of a board of township trustees. There are no state or local departmental regulations applicable. With respect to federal law, the federal Hatch Act may apply in this instance. 5 U.S.C.A. §§ 1501-1508.

The Hatch Act prohibits a “State or local ... employee” from being “a candidate for elective office” “if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency.”¹² 5 U.S.C.A. § 1502(a)(3). The Hatch

¹² Division (a)(3) of 5 U.S.C.A. § 1502 does not apply to “an individual holding elective office.” 5 U.S.C.A. § 1502(c)(4). Therefore, if an individual holds an elective public office and is subsequently hired in a position that qualifies as a “State or local ... employee” and the employee’s salary is paid completely, directly or indirectly, by federal loans or grants, that individual does not have to resign his or her office, but may not seek reelection to that office while holding that position. *See* United States Office of Special Counsel, Hatch Act: Frequently Asked Questions, <https://osc.gov/Pages/HatchAct-FAQs.aspx> (choose “I am a State ... or Local Employee;” then choose the “+” sign next to the question, “If I hold a partisan elected office, does the Hatch Act prohibit me from accepting a position within State ... or local government where my salary is entirely federally funded?”) (last visited Sep. 6, 2016) (“[w]hile the Hatch

Act defines “State or local ... employee” as “an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by” federal loans or grants.¹³ 5 U.S.C.A. § 1501(4); *see also* 5 C.F.R. § 151.101(d). A “State or local agency” includes “the executive branch of a ... political subdivision of a State, or an agency or department thereof.” 5 U.S.C.A. § 1501(2); *see also* 5 C.F.R. § 151.101(a)-(b). A CDJFS is a department of the executive branch of a political subdivision of the State, namely, a county. Further, a CDJFS may receive financial assistance from the federal government. *See generally* R.C. 5101.11 (ODJFS may collect and disburse federal moneys to a CDJFS); R.C. 5101.16(E) (ODJFS shall credit to a county the amount of federal reimbursement the ODJFS receives from the federal government for the county’s expenditures for administration of food stamps and Medicaid). Therefore, a director of a CDJFS may be a State or local employee within the meaning of the Hatch Act if the CDJFS is financed in whole or in part by federal grants or loans.¹⁴ If a CDJFS is financed in whole or in part by federal grants or loans and the salary of the director is paid completely, directly or indirectly, by federal grants or loans, the director is prohibited from being a “candidate for elective office.” 5 U.S.C.A. § 1502(a)(3).

“Elective office means any office which is voted upon at an election ..., but does not include political party office.” 5 C.F.R. § 151.101(i). An election, as used in the foregoing definition, “includes a primary, special, and general election.” 5 C.F.R. § 151.101(f). A member of a board of township trustees is nominated by petition and stands for election to that office on a nonpartisan ballot, “unless a majority of the electors of such township have petitioned for a primary election.” R.C. 3513.253; *see also* R.C. 3505.04; R.C. 3513.01; 2011 Op. Att’y Gen. No. 2011-034, at 2-267 n.4 (“[c]andidates for the office of township trustee are nominated by petition, rather than in a primary election. ... When a township does not conduct a primary election for the office of township trustee, the candidates for such office appear on a nonpartisan ballot”); 1978 Op. Att’y Gen. No. 78-022, at 2-52. A member of a village legislative authority in a village with a population of less than two thousand also is nominated by petition and stands for election to that office on a nonpartisan ballot unless a majority of the electors of the village files

Act prohibits a state, D.C., or local government employee whose salary is entirely federally funded from running for partisan political office, it does not prohibit the employee from holding partisan elective office”).

¹³ Title 5 U.S.C.A. § 1501(4), divisions (A)-(B)(iii) provide exceptions to the definition of “State or local ... employee.” *See also* 5 C.F.R. § 151.101(d)(1)-(2)(iii). Those exceptions are not relevant for this opinion.

¹⁴ A director of a CDJFS is principally employed to administer the work of the CDJFS. *See* R.C. 329.02 (“the county director of job and family services shall have full charge of the [CDJFS]”). Thus, if a CDJFS is at least partially funded by federal monies, a director of a CDJFS is “an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency.” 5 U.S.C.A. § 1501(4).

a petition with the board of elections requesting a primary election. R.C. 3513.01(C) (“[p]rimary elections shall not be held for the nomination of candidates for election as officers of ... any municipal corporation having a population of less than two thousand, unless a majority of the electors of any such ... municipal corporation ... files with the board of elections of the county within which such ... municipal corporation is located ... a petition signed by such electors asking that candidates for election as officers of such ... municipal corporation be nominated as candidates of political parties”); R.C. 3513.251 (“[n]ominations of candidates for election as officers of a municipal corporation having a population of less than two thousand ... shall be made only by nominating petition and their election shall occur only in nonpartisan elections, unless a majority of the electors of such municipal corporation have petitioned for a primary election”); 1982 Op. Att’y Gen. No. 82-085, at 2-239 (“[c]andidates for council in villages with a population of less than two thousand persons are nominated by petition, rather than in a primary election, unless a majority of electors files a petition with the board of elections requesting a primary.... The nominated candidates then seek election on a nonpartisan ballot”). Accordingly, the Hatch Act does not prohibit a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), whose salary is paid completely, directly or indirectly, by federal grants or loans from serving simultaneously as a member of a board of township trustees or member of a village legislative authority when the township trustee or member of the village legislative authority is nominated by petition and elected after appearing on a nonpartisan ballot.

The election of a member of a board of township trustees or member of a village legislative authority transforms from nonpartisan to partisan when township or village electors petition for a primary election or when the candidate seeks election to a village legislative authority in a village with a population of two thousand or more persons. R.C. 3513.251; R.C. 3513.253; *see also* 1978 Op. Att’y Gen. No. 78-022, at 2-52 (“R.C. 3513.253 requires that a primary election be held upon petition of a majority of the electors in the township. Where such a primary is held the ensuing general election becomes partisan, with partisan ballots in use”). In those circumstances, the Hatch Act prohibits a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), whose salary is paid completely, directly or indirectly, from federal loans or grants, from seeking election to the office of township trustee or member of a village legislative authority.

The final question of the compatibility analysis may be answered in favor of compatibility so long as the salary of a director of a CDJFS is not paid completely, directly or indirectly, by federal loans or grants. If the salary of a director of a CDJFS is paid completely, directly or indirectly, by federal loans or grants and the director is a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), the final question of the compatibility analysis may still be answered in favor of compatibility so long as the person that serves as director of a CDJFS seeks election to the office of member of a board of township trustees or member of a village legislative authority in a nonpartisan election.

Conclusions

In sum, it is our opinion, and you are hereby advised that:

1. A person may serve simultaneously as director of a county department of job and family services and member of a village legislative authority provided that no contract exists between the county department of job and family services and the village and provided that, as a member of the village legislative authority, the person does not participate in any deliberations, discussions, negotiations, or votes concerning agreements with the county department of job and family services and does not participate in any discussions or votes on tax levies or bond issues for additional funding for the village if the board of county commissioners has placed a tax levy on the ballot to fund the operations of the county department of job and family services. If the salary of the director of the county department of job and family services is paid completely, directly or indirectly, by federal loans or grants, and the director is a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), a person may serve simultaneously as director of a county department of job and family services and member of a village legislative authority only if the person seeks election to the office of member of a village legislative authority in a nonpartisan election.
2. A person may serve simultaneously as director of a county department of job and family services and member of a board of township trustees provided that no contract exists between the county department of job and family services and the township and provided that, as a member of the board of township trustees, the person does not participate in any deliberations, discussions, negotiations, or votes concerning agreements with the county department of job and family services and does not participate in any discussions or votes on tax levies or bond issues for additional funding for the township if the board of county commissioners has placed a tax levy on the ballot to fund the operations of the county department of job and family services. If the salary of the director of the county department of job and family services is paid completely, directly or indirectly, by federal loans or grants, and the director is a “State or local ... employee” as defined in 5 U.S.C.A. § 1501(4) and 5 C.F.R. § 151.101(d), a person may serve simultaneously as director of a county

department of job and family services and member of a board of township trustees only if the person seeks election to the office of member of a board of township trustees in a nonpartisan election.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL DEWINE
Ohio Attorney General