

February 18, 2020

The Honorable William C. Hayes  
Licking County Prosecuting Attorney  
20 South Second Street  
Newark, Ohio 43055

SYLLABUS:

2020-001

A person who serves as a real estate appraiser in the unclassified service with the county auditor's office, and who, pursuant to the person's job duties, is not able to abstain from appraising certain property within the county, may not serve simultaneously as a member of the board of zoning appeals for a township within the same county.



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OPINION NO. 2020-001

The Honorable William C. Hayes  
Licking County Prosecuting Attorney  
20 South Second Street  
Newark, Ohio 43055

Dear Prosecutor Hayes:

You have requested an opinion on the following matter:

May a person employed as a real-estate appraiser with the Licking County Auditor's Office also be appointed to the board of zoning appeals for the township in which the appraiser resides, which is located in Licking County?

Your letter states that the real-estate appraiser position is in the unclassified service. In addition, your letter states the appraiser will not sit on the county board of revision or on the county budget commission on behalf of the county auditor. It is my understanding, based on your letter, that the real-estate appraiser's only duty is to appraise real estate. In addition, your letter states that because the appraiser is the only commercial real-estate appraiser on the county auditor's staff, the appraiser could not abstain from appraising property within his or her township. It is my understanding that the township in question has not adopted any home-rule provisions pursuant to R.C. Chapter 504.

The following seven questions are used to determine whether a person may hold two public positions simultaneously:

1. Is either position in the classified service for purposes of R.C. 124.57?
2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?
3. Is one position subordinate to, or, in any way, a check upon the other position?

4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances that are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2019 Op. Att’y Gen. No. 2019-012, at 1 to 2; 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. 2013 Op. Att’y Gen. No. 2013-008, at 2-78. Consequently, if one of the seven questions is resolved against a finding of compatibility, the positions are incompatible. *Id.* at 2-79. Here, the answer to Question Five establishes the positions’ incompatibility, and so there is no need to consider the other questions.

Question Five asks whether a conflict of interest exists between the two positions. A person may not serve simultaneously in two positions when an impermissible conflict of interest exists between the positions. 2017 Op. Att’y Gen. No. 2017-014, at 5. 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.” 1989 Op. Att’y Gen. No. 89-052, at 2-220 (internal citations omitted.) To determine whether a conflict of interest exists between two positions, I must first examine the powers, duties, and responsibilities of each of the positions. If my review reveals that a conflict of interest exists between the positions, I will next need to determine whether the conflict may be sufficiently mitigated or eliminated entirely, thus allowing the person to hold both positions at the same time. Factors used in making this determination include “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.” 2004 Op. Att’y Gen. No. 2004-051, at 2-439.

When analyzing potential conflicts of interest involving a deputy of an elected officeholder, generally only the specific duties of the deputy, not all of the duties of the elected officeholder, are analyzed to determine whether there is a conflict. 2011 Op. Att’y Gen. No 2011-023, at 2-189 to 2-190; 1986 Op. Att’y Gen. No. 86-035, at 2-184 n.2.

A real-estate appraiser employed by the county auditor appraises the value of real property within the county. R.C. 5713.01 – 5713.03. This appraisal is used to

determine the taxable value of the property. Property owners may file complaints with the county board of revision to dispute the assessed value of the property, but the burden of proof is on the property owner to show that the county auditor's assessment is incorrect. R.C. 5715.19; *Freshwater v. Belmont County Bd. of Revision*, 80 Ohio St.3d 26, 28, 684 N.E.2d 304 (1997). It is my understanding that the real-estate appraiser position at the county auditor's office performs no duties other than appraising real property.

Each township that adopts zoning regulations pursuant to R.C. Chapter 519 is required to have a township board of zoning appeals. R.C. 519.13. The township board of zoning appeals has several powers related to township zoning regulations. The board of zoning appeals may hear appeals to decide if there was an error in the enforcement of zoning regulations, hear appeals to authorize specific variances to zoning regulations, grant conditional zoning certificates, and revoke an authorized variance if a condition of the variance is violated. R.C. 519.14; *see also* 2003 Op. Att'y Gen. No. 2003-041, at 2-340; 2002 Op. Att'y Gen. No. 2002-012, at 2-67. The powers of a board of zoning appeals are of a judicial or quasi-judicial nature. 1960 Op. Att'y Gen. No. 1960-1625, at 555; 1955 Op. Att'y Gen. No. 1955- 4893, at 94. Members of the board of zoning appeals are township officers. 1955 Op. Att'y Gen. No. 1955- 4893, at 94.

A conflict clearly exists when the same person is a member of a township board of zoning appeals and an appraiser for the county auditor because the board of zoning appeals may at times be called upon to evaluate the validity of the county auditor's appraisal. Evidence that granting an application for a zoning variance would change the value of the property is one factor that the board of zoning appeals may consider when deciding whether to grant a variance. *C. Miller Chevrolet, Inc. v. Willoughby Hills*, 38 Ohio St. 2d 298, syllabus. Similarly, the property's assessment can be used to determine whether repairs or variances should be allowed. *Davis v. City of Barberton*, 9<sup>th</sup> Dist. Summit C.A. No. 23767, 2008-Ohio-113, ¶8; *Conrad v. Babcock*, 124 Ohio App.3d 667, 669, 707 N.E.2d 44 (11<sup>th</sup> Dist. 1997). The auditor's assessment of the property can be used as evidence of the property's value. *See, e.g. Boice v. Vill. of Ottawa Hills*, 137 Ohio St. 3d 412, ¶ 17; *Conrad v. Babcock*, 124 Ohio App.3d 667, 669, 707 N.E.2d 44 (11<sup>th</sup> Dist. 1997). Even if the auditor's value is not used directly, parties can commission private appraisals as evidence. *See e.g. Shelly Materials, Inc. v. City of Streetsboro Planning & Zoning Comm'n*, 2019-Ohio-4499 (slip opinion), ¶ 19-21. The assessed tax value, and the property characteristics determined by the tax assessor, are factors that can be used by a private appraiser to determine the property's value. *See generally* Appraisal Practices Board Valuation Advisory No. 8 at 20, 23, issued 11/1/2016 (available online at <http://www.appraisalfoundation.org/imis/docs/Valuation-Advisory-8-Collection-and-Verification-of-Residential-Sales-101716.pdf>.)

If a member of the township board of zoning appeals were also the appraiser who compiled the appraisal for the county auditor, then he would be called upon to pass judgment on the quality of his work as an appraiser. He would effectively be serving as both a judge and witness. Such a situation would deprive the parties of a neutral arbitrator, and creates a clear conflict of interest.

This conflict, however, could be avoided if the appraiser abstained from appraising property within the township. So long as the appraiser does not appraise property that is subject to a hearing by the board of zoning appeals, the conflict can be avoided.

Your letter, however, indicates that because the appraiser is the only commercial property appraiser on the county auditor's staff, it is not possible for the appraiser to abstain from appraising all property within his township. Therefore, in this particular instance, the conflict may not be avoided and the two positions are incompatible.

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

A person who serves as a real estate appraiser in the unclassified service with the county auditor's office, and who, pursuant to the person's job duties, is not able to abstain from appraising certain property within the county, may not serve simultaneously as a member of the board of zoning appeals for a township within the same county.

Respectfully,



DAVE YOST  
Ohio Attorney General