

December 11, 2017

The Honorable David W. Phillips  
Union County Justice Center  
221 West Fifth Street  
Marysville, Ohio 43040

SYLLABUS:

2017-043

A person may serve simultaneously as a member of a board of township trustees and a commissioner of jurors.



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OPINION NO. 2017-043

The Honorable David W. Phillips  
Union County Justice Center  
221 West Fifth Street  
Marysville, Ohio 43040

Dear Prosecutor Phillips:

You have requested an opinion whether a member of a board of trustees of a township may serve simultaneously as a commissioner of jurors.

A seven-question test is used to determine whether a person may serve in multiple public positions:

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 employment in another public position or the holding of another public office?
3. Is one position 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 an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2003 Op. Att’y Gen. No. 2003-010, at 2-69 to 2-70. “In order for two positions to be found compatible, all seven questions must be resolved in favor of compatibility.” 1989 Op. Att’y Gen. No. 89-052, at 2-218. To answer these questions, we need to understand the primary statutory duties and functions this person will carry out in each position.

### **Duties and Functions of a Commissioner of Jurors**

R.C. Chapter 2313 creates the office of commissioner of jurors and establishes the procedures through which the commissioners of jurors summon jurors and draw their names for service. R.C. 2313.01(A) authorizes the appointment of two persons by the judges of the general division of the court of common pleas to serve as commissioners of jurors. The appointment is made by the judge or a majority of the judges where there is more than one judge in the county. *Id.* A commissioner of jurors holds office at the pleasure of the judges of the court of common pleas in the county of his

appointment, and serves as an officer of the court of common pleas of the county. *Id.* Compensation for a commissioner of jurors is fixed by the court of common pleas and paid out of the county treasury. R.C. 2313.02(A). A commissioner of jurors shall not be an attorney at law and shall not be of the same political party as the other commissioner of jurors. R.C. 2313.01(A). A commissioner of jurors may also serve as a court employee. *Id.*

With the written consent of the court, a commissioner of jurors may appoint or remove as many deputy commissioners as needed to carry out the provisions in R.C. Chapter 2313. R.C. 2313.02(A). Additionally, a commissioner of jurors may authorize a deputy commissioner to perform any duty or class of duties that a commissioner may perform when the commissioner of jurors authorizes such duties in writing. R.C. 2313.02(B). A commissioner of jurors or any deputy commissioner may administer an oath or affirmation in relation to any matter governed by R.C. Chapter 2313. *Id.*

R.C. 2313.01(B) authorizes a commissioner of jurors to “examine under oath any juror called for trial as to that person’s qualifications to serve as a juror.” A commissioner’s “duties include making annual and supplementary jury lists, selecting a sufficient number of electors from such lists to constitute the required number of prospective jurors, and notifying prospective jurors that they have been drawn for jury duty.” 2014 Op. Att’y Gen. No. 2014-022, at 2-197; *see also* R.C. 2313.06 -.10. The commissioner of jurors shall publish notice of the drawing of jurors in at least one newspaper of general circulation in the county, and serve written notice of the drawing upon the clerk of the common pleas court and at least one judge of the common pleas court. R.C. 2313.08(A). The commissioner of jurors shall keep records of all proceedings before him. *See* R.C. 2313.06; R.C. 2313.09; R.C. 2313.14(G). A commissioner of jurors is authorized to exempt from jury service those individuals entitled to exemption upon their request. *See* R.C. 2313.12; R.C. 2313.14-.15.

### **Duties and Functions of a Member of a Board of Township Trustees**

A township trustee, as an elected township officer, R.C. 505.01, serves and is responsible to the township’s electorate. The powers, duties, and responsibilities of a member of a board of township trustees relate primarily to exercising executive and legislative powers on behalf of the township. 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”). A board of township trustees is authorized to appoint a township administrator, R.C. 505.031; maintain an inventory of township supplies, R.C. 505.04; maintain a list of building nuisances, R.C. 505.06; accept and dispose of property, R.C. 505.10; exchange, transfer, and lease real property, R.C. 505.104; R.C. 505.11; provide for solid waste facilities, R.C. 505.12; purchase, construct, or acquire township parks, public library buildings, and other public areas, R.C. 505.26; and provide fire and police protection to the township’s residents, R.C. 505.37-.39; R.C. 505.43. “A board of township trustees also handles fiscal and budgetary matters on behalf of the township.” 2000 Op. Att’y Gen. No. 2000-025, at 2-168. Generally, a board of township trustees is required to adopt a tax budget for each fiscal year, R.C. 5705.28, and submit the tax budget to the county auditor, R.C. 5705.30, who in turn presents the tax budget to the county budget commission, R.C. 5705.31. As a taxing authority under R.C. 5705.01(C), the board of township trustees is authorized to levy taxes within the ten-mill limitation, *see* R.C.

5705.05-.06, and to submit tax levies in excess of the ten-mill limitation to the electors, *see* R.C. 5705.07; R.C. 5705.19-.191.

### **Application of R.C. 124.57**

The first question of the compatibility analysis concerns the application of R.C. 124.57, and asks whether a particular position is in the classified service for purposes of that statute. R.C. 124.57(A) provides, in part:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political party or for any candidate for public office; ... nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state be an officer in any political organization or take part in politics other than to vote as the officer or employee pleases and to express freely political opinions.

“R.C. 124.57 thus prohibits a classified employee from holding a partisan elective office or engaging in partisan political activities, but does not apply to non-partisan elective offices.” 1989 Op. Att’y Gen. No. 89-022, at 2-101. Therefore, we must determine whether the positions of member of a board of trustees of a township and a commissioner of jurors are in the classified civil service.

A board of township trustees consists of three members, elected by general election for a four year term. R.C. 505.01. R.C. 124.11(A)(1) states that the unclassified service includes “all officers elected by popular vote.” Because a member of a board of township trustees is an elected official, this position is not within the classified service of the township.

R.C. 124.11(A)(10) includes in the unclassified service “commissioners of courts of record, ... and such officers and employees of courts of record[.]” “Commissioners of courts of record” are not specifically defined in R.C. Chapter 124. *See* R.C. 1.42 (when a term is not statutorily defined, we look to the common and ordinary meaning of a term). *Black’s Law Dictionary* 272 (6th ed. 1997) defines a “commissioner” as “[a] person to whom a commission is directed by ... a court. . . . An officer who is charged with the administration of the laws relating to some particular subject matter, ... Specially appointed officer of court.” A commissioner of jurors is appointed by the judges of the court of common pleas to oversee the process of summoning jurors for jury duty, and is an officer of the court. R.C. 2313.01(A). A “court of record” is “[a] court that is required to keep a record of its proceedings, and that may fine or imprison.” *Black’s Law Dictionary* 353 (6th ed. 1997). A commissioner of jurors is required to keep a record of all proceedings before him. *See* R.C. 2313.06; R.C. 2313.09; R.C. 2313.14(G). In circumstances where a juror refuses to attend when properly summoned, the judge may punish that juror by a proceeding in contempt. *See* R.C. 2705.05; R.C. 1907.29(G). As an officer of a court of record charged with the administration of summoning individuals for jury service, a commissioner of jurors qualifies as a “commissioner of courts of record”

under R.C. 124.11(A)(10). Also, a commissioner of jurors serves as an officer of the court as provided in R.C. 2313.01(A). Thus, a commissioner of jurors is in the unclassified civil service. Because neither of the positions described in your letter are within the classified civil service, the prohibitions set forth in R.C. 124.57 do not apply. R.C. 124.57 does not operate to prevent a person from simultaneously holding the positions of member of a board of township trustees and commissioner of jurors. Accordingly, the first question of the compatibility analysis may be answered in favor of compatibility.

### **Constitutional and Statutory Limitations on Holding Multiple Positions and Other Applicable Federal, State, and Local Prohibitions**

For ease of discussion, we will address the second, sixth, and seventh questions of the compatibility analysis together. The second question of the compatibility analysis asks whether the empowering statutes of any of the positions limit the simultaneous holding of other public employment or another public office. Holding another position may also be prohibited by the Ohio Constitution. 2004 Op. Att’y Gen. No. 2004-051, at 2-437. The sixth and seventh questions concern the applicability of local charter provisions, resolutions, or ordinances and federal, state, and local regulations that prohibit the simultaneous holding of several positions.

We are aware of no statutory provisions that prohibit a township trustee from holding simultaneously the position of commissioner of jurors, nor a commissioner of jurors holding simultaneously the position of township trustee. We also conclude that no constitutional provision prohibits a person from holding simultaneously the positions of member of a board of township trustees and commissioner of jurors. We further find no state or federal regulation prohibiting a person from simultaneously serving in the positions in question. Although these positions are not part of the federal government, if any of the positions should receive, administer, or are in some way accountable for federally-sourced moneys, there may be applicable federal regulations.<sup>1</sup> Additionally, “whether there is an applicable local charter provision, resolution, ordinance, or departmental regulation which prohibits a person from concurrently holding these two positions is a question for [local] officials to answer.” 2004 Op. Att’y Gen. No. 2004-051, at 2-434. We are not aware of rules or regulations, or local rules adopted by the Union County Court of Common Pleas as the appointing authority for the commissioner of jurors, that prohibit the simultaneous holding of these public

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<sup>1</sup> Pursuant to 5 U.S.C.A. § 1502(a)(3), commonly known as the Hatch Act, a state or local officer or employee may not be a candidate for elective office if that officer or employee’s salary is paid completely, directly or indirectly, by federal loans or grants. We are otherwise unable to determine whether a person that serves as a member of a board of township trustees or a commissioner of jurors administers or is in some way accountable for federal moneys.

positions. *See generally* Ohio R. Civ. P. 83 (authorizing the adoption of local rules in civil matters); Ohio R. Crim. P. 57 (authorizing the adoption of local rules in criminal matters). Thus, it is assumed, for the purpose of this opinion that no local charter provisions, resolutions, ordinances, or departmental regulations apply to the simultaneous holding of these two positions.

### **Physical Ability to Discharge Duties**

The fourth question of the compatibility analysis asks whether it is physically possible for one person to hold two positions simultaneously and fully perform all of the duties required of each position. As an elected official, a township trustee is not required to devote specified hours to the performance of his duties. *See* 2001 Op. Att’y Gen. No. 2001-036, at 2-218 n.6. Typically serving during the time the court is hearing matters associated with jury service, a commissioner of jurors will perform his duties during the court’s regular business hours. However, on occasion a jury may be required to deliberate after regular business hours. The physical ability of a person to discharge the duties in each position “is a factual question that is best resolved by the interested local officials since they may more precisely determine the time constraints and demands [of each position] imposed upon the person[.]” 2004 Op. Att’y Gen. No. 2004-051, at 2-438. In resolving this inquiry, “a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner.” *Id.*, at 2-439. Should the person in his capacity as a township trustee be required to perform township duties during his regular work hours as a commissioner of jurors, he will have to use appropriate leave time commensurate with the amount of time he is absent from his duties as a commissioner of jurors. *See* 2009 Op. Att’y Gen. No. 2009-010, at 2-90. This person and his appointing authority should evaluate the time demands of each position and how the constraints on time may affect his performance in each position to determine whether it is physically possible for him to hold more than one position simultaneously. It may be beneficial to determine whether the other commissioner of jurors or a deputy commissioner of jurors may perform duties of the office of the commissioner of jurors if this person is unavailable because of his duties as a township trustee. However, if there is a direct and regular conflict between the times when the person is needed to perform duties in each position, the two positions are incompatible.

### **Subordination and Control**

The third question of the compatibility analysis asks whether either position is subordinate to or under the control of the other position or whether either position is a check upon the other. As an elected official, a member of a board of township trustees is responsible to the electorate, and performs the duties imposed upon him 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”). A commissioner of jurors is appointed by the judges of the general division of the court of common pleas. R.C. 2313.01(A). A commissioner of jurors serves at the pleasure of the judge or judges of the general division of the court of common pleas in the county of his appointment. *Id.*; *see* 1937 Op. Att’y Gen. No. 972, vol. II, p. 1704, at 1705 (“jury commissioners come solely under the jurisdiction and control of the common pleas court”). The duties of each position operate independently of the other. Neither position assigns duties to or supervises the other. Thus, neither position is subordinate to, or in any way a check upon, the other.

### Conflicts of Interest

The fifth question asks whether a conflict of interest exists when one person serves simultaneously in two positions. 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 (quoting 1985 Op. Att’y Gen. No. 85-100, at 2-427).<sup>2</sup> “A person may not hold two public positions simultaneously if he would be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best interest of the respective agencies or offices he serves.” 2000 Op. Att’y Gen. No. 2000-025, at 2-168.

That a conflict of interest may exist between two positions does not necessarily mean that a person is prohibited from holding them at the same time. 1998 Op. Att’y Gen. No. 98-033, at 2-189; *see also State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d 96, 99, 206 N.E.2d 563 (1965) (possibility of conflict of interest is insufficient to oust a duly elected public official from office). Rather, whether a conflict of interest is impermissible, in the sense that it makes two positions incompatible, depends upon several factors:

[i]f our review discloses such conflicts, we must next determine the immediacy of the conflicts to see whether the conflicts may be sufficiently avoided or eliminated entirely so as to allow the person to serve simultaneously in both positions. The pertinent factors used in making this determination include, but are not limited to, the probability of the conflict, the ability of the person to remove himself from the conflict (should it arise), whether the person exercises decision-making authority in both positions, and whether the conflict relates to the primary functions of each position, or to financial or budgetary matters.

2006 Op. Att’y Gen. No. 2006-010, at 2-86 to 2-87.

Several potential budgetary conflicts of interest may arise for this person in his positions as member of a board of township trustees and commissioner of jurors, which include competition for tax moneys generated within the ten-mill limitation, competition for an appropriation of moneys from

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<sup>2</sup> Pursuant to R.C. 102.08(A), the Ohio Ethics Commission renders advisory opinions regarding the application of the provisions of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43 to the conduct of public officials. In light of this express statutory grant of power to the Ohio Ethics Commission, the Attorney General refrains from issuing formal opinions on questions that are within the Commission’s exclusive jurisdiction. 1997 Op. Att’y Gen. No. 97-044, at 2-275 n.6; 1989 Op. Att’y Gen. No. 89-037, at 2-166 to 2-167. Thus, questions with respect to the applicability of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43 to the positions at issue in this opinion should be directed to the Ohio Ethics Commission.

the undivided local government fund, and competition for tax moneys generated in excess of the ten-mill limitation. In addition to budgetary matters, if a legal action involving the township of which this person is a trustee is instituted before the court of common pleas and the proceeding involves a jury, a potential conflict of interest may occur. Our review of these potential conflicts of interest begins with a discussion of the budgetary process involving distribution of tax moneys within the ten-mill limitation and appropriation of the undivided local government funds.

The first of these potential conflicts of interest occurs when the township and the county compete for tax moneys generated within the ten-mill limitation.<sup>3</sup> Property taxes levied on real property within the township are a township's principal source of local revenue. *Ohio Township Association Legislative Priorities*, [https://ohiotownships.org/sites/default/files/Legislative\\_Priorities\\_New.pdf](https://ohiotownships.org/sites/default/files/Legislative_Priorities_New.pdf) (last accessed on September 29, 2017). Except as provided in R.C. 5705.28(B) or R.C. 5705.281, R.C. 5705.28(A) requires a board of township trustees to prepare, adopt, and submit an annual tax budget to the county budget commission. *See generally* R.C. 5705.01(C) (for purposes of R.C. Chapter 5705, a board of township trustees is the "taxing authority" of a township). Likewise, a board of county commissioners is required to prepare, adopt, and submit an annual tax budget for the county to the county budget commission. *See* R.C. 5705.28(A); *see generally* R.C. 5705.01(C) (for

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<sup>3</sup> Article XII, Section 2 of the Ohio Constitution provides as follows:

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation.

2016 Op. Att'y Gen. No. 2016-017, at 2-172 to 2-173 n.4 further explains that Article XII, Section 2 of the Ohio Constitution is the basis of the distinction between "inside millage" and "outside millage":

A "mill," meaning "one one-thousandth," is a rate of tax imposed upon the taxable value of property. Taxable value is 35 percent of the true value (also known as the market value) of the property. *See* 16B Ohio Admin. Code 5703-25-05(B). One mill is one one-thousandth of the taxable value, considered as the amount of tax to be paid so that ten mills equal one percent of the taxable value. Article XII, Section 2 of the Ohio Constitution allows property to be subjected to a rate of ten mills without voter approval, also known as inside millage. Outside millage is a request for taxes upon property in excess of the first ten mills and requires voter approval.

*See Sanborn v. Hamilton Cnty. Budget Comm'n*, 142 Ohio St. 3d 20, 2014-Ohio-5218, 27 N.E.3d 498, at ¶¶ 5-7.



purposes of R.C. Chapter 5705, a board of county commissioners is the “taxing authority” of the county). The county’s tax budget shall include, *inter alia*, “[a] statement of the necessary current operating expense for the ensuing fiscal year for each department and division of the subdivision, ... and the fund from which such expenditures are to be made.” R.C. 5705.29(A)(1). The annual tax budget for the county includes the court of common pleas’ necessary operating expenses for the ensuing fiscal year. To receive appropriations from the county treasury, the court of common pleas is required under R.C. 307.01(B) to submit annually a written request for an appropriation to the board of county commissioners setting forth the estimated administrative expenses of the court that the court considers reasonably necessary for its operation. The office of the commissioners of jurors is under the exclusive jurisdiction of the court of common pleas. Accordingly, a court of common pleas’ budget request will include moneys for the expenses of the office of the commissioners of jurors. *See also* R.C. 5705.28(C)(1) (to assist the board of county commissioners in the preparation of the tax budget, “the head of each department, board, commission and district authority entitled to participate in any appropriation or revenue of [the county] shall file with the [board] ... an estimate of contemplated revenue and expenditures for the ensuing fiscal year”).

The county budget commission examines each political subdivision’s submitted tax budget, including the county’s tax budget and each township’s tax budget, and ascertains the total amount proposed to be raised in the county for purposes of each subdivision and the taxing units therein. *See* R.C. 5705.31. Thereafter, the county budget commission may revise and adjust the estimate of balances and receipts from all sources for each fund within each subdivision’s tax budget. R.C. 5705.32. As part of the budget process, the board of county commissioners is required to pass an annual appropriation measure based on the tax budget certifying that tax revenues, other receipts, and resources will be sufficient to meet planned expenditures. *See* R.C. 307.01(B); *see also* R.C. 2313.04 (requiring that the board of county commissioners “provide a suitable office for the commissioners of jurors on the order of the court of common pleas and shall make provision for supplying all equipment, stationery, postage, advertisement expenses, computer software and other supplies as are necessary for the proper and convenient conduct of the commissioners in discharging the duties imposed by [R.C. Chapter 2313]”). The board of county commissioners is required to appropriate moneys for operation of the office of commissioners of jurors.

Provisions in R.C. 5747.50-.55 address the creation and operation of the undivided local government fund. Moneys from each county undivided local government fund are to be apportioned to the county’s subdivisions based on the relative need of each subdivision. The county treasurer distributes the moneys comprising the undivided local government fund to the various subdivisions based on subdivision percentage shares authorized by the county budget commission. “Because both a county and township are included within the definition of ‘subdivision,’ for purposes of R.C. 5747.50-.55 and R.C. 5747.62-.63, *see* R.C. 5747.01(Q)(1); R.C. 5747.62(A), each may be apportioned moneys from the undivided local government fund[.]” 2003 Op. Att’y Gen. No. 2003-006, at 2-34. A board of county commissioners, who fund the operations of the court of common pleas, inclusive of the office of the commissioner of jurors, and a board of township trustees are each responsible for preparing a budget for submission to the county budget commission and are provided the opportunity to appear before the budget commission to establish their need for moneys they have requested. R.C. 5747.51(B).

Potential conflicts of interest occur when the township and county compete for tax moneys within the ten-mill limitation and the undivided local government fund. A county and a township compete with each other, and with every other subdivision in the county, for a finite amount of revenue generated within the ten-mill limitation. 2012 Op. Att’y Gen. No. 2012-008, at 2-54 to 2-55. Because the township and county compete for tax moneys inside the ten-mill limitation and moneys that comprise the undivided local government fund, a member of a board of township trustees who also serves as commissioner of jurors for the court of common pleas in the same county may find it difficult to remain objective in completing the competing budgetary tasks of the township and the office of the commissioner of jurors. His loyalties to the township and the court of commons pleas of the county may thus be in opposition. *See* 2003 Op. Att’y Gen. No. 2003-006, at 2-35 (“if a person were to assist in the preparation and presentation of both the county’s and township’s annual tax budget to the county budget commission, that person might be subject to influences that could prevent him from making completely objective, disinterested decisions”). Nonetheless, the Attorney General has previously explained that the holding of additional employment by a township trustee with a political subdivision that competes with the township for an appropriation of tax proceeds from the county budget commission is an insufficient reason to find that the trustee is subject to an impermissible conflict of interest. 2000 Op. Att’y Gen. No. 2000-025, at 2-172.

A commissioner of jurors is not responsible for appearing before the county budget commission as a part of his duties. The commissioner of jurors has no control over the budgetary matters of the court of common pleas, or of the county. The decision-making power in preparing judicial branch budgets lies with the judges of the court of common pleas and the board of county commissioners. Moreover, when addressing competition for tax moneys inside the ten-mill limitation or moneys from the undivided local government fund, the county budget commission is the ultimate decision-maker when allocating those moneys among the county and the other political subdivisions within the county. *See* 2014 Op. Att’y Gen. No. 2014-022, at 2-205 (“while the township and county each prepare and submit a tentative tax budget and request moneys from the undivided local government fund, it is the county budget commission that actually allocates to the township and the county tax proceeds within the ten-mill limitation and moneys from the undivided local government fund”); 1981 Op. Att’y Gen. No. 81-010, at 2-33 (“while each taxing authority submits a tentative budget, it is the budget commission which actually allocates money to the various subdivisions after adjusting the rates of taxation, fixing the amount of taxes to be levied, and adjusting the estimates of balances and receipts from available sources”). Hence, this potential conflict of interest is too remote to be impermissible. Additionally, the court of common pleas appoints two commissioners of jurors. Should one of the commissioners of jurors face a conflict of interest in preparing a budget for the office, the other commissioner of jurors may address the matter in order to allow this person to remove himself to avoid the conflict of interest.

Preparation and adoption of a township tax budget is a primary duty of a board of township trustees. It is not practical for a township trustee to abstain from discussing or making decisions about the compilation or adoption of a township tax budget, responsibilities that arise on an annual basis. 2016 Op. Att’y No. 2016-034, at 2-417; *see also* 1990 Op. Att’y Gen. No. 90-083, at 2-358 (“it would, as a practical matter be laborious for the person [serving as a member of a board of township trustees while simultaneously serving another political subdivision competing for tax moneys] to

remove himself from the conflicts by abstaining from taxing and budgetary matters”). Nonetheless, any undue influence that a member of a board of township trustees might exert in compiling and adopting a township tax budget may be mitigated by the role the other board members play in the process. 2016 Op. Att’y No. 2016-034, at 2-417. Regardless of a township trustee’s requirement to prepare the township’s tax budget, and the possibility that he may be required to explain it to the county budget commission, “it is unlikely that he would use less than his best judgment in preparing the budget or explaining it to the commission.” 2000 Op. Att’y Gen. No. 2000-025, at 2-172; *see generally State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph 10) (“in 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”). We find the potential conflicts of interest with respect to competition for tax moneys inside the ten-mill limitation and moneys that comprise the undivided local government fund are insufficient to make the two positions incompatible.

A third budgetary conflict of interest may exist between a member of a board of township trustees and a commissioner of jurors due to the competition between a township and a county for tax moneys in excess of the ten-mill limitation. R.C. 5705.07 authorizes a board of township trustees and a board of county commissioners to place levies on the ballot for taxes in excess of the ten-mill limitation. *See also* R.C. 5705.19; R.C. 5705.19(LL) (authorizing a resolution by the board of county commissioners declaring it is necessary to a levy a tax in excess of the ten-mill limitation for the support by a county of criminal justice services under R.C. 307.45); R.C. 307.45(A)(2) (includes the provision of financial support for a court of common pleas as a permissible use of moneys received from levied taxes).

When two political subdivisions have placed on the same ballot competing levies for taxes in excess of the ten-mill limitation, there is a risk that the electorate may reject one levy in favor of the other. In the event that a board of county commissioners has authorized a tax levy for additional funds for the court of common pleas, this person as a township trustee, recognizing this risk, may be apprehensive to place a competing township levy on the same ballot. Thus, he is subjected to divided loyalties when recommending a levy for the benefit of the township as such action may be disadvantageous to the passage of a levy for the operating budget of his employer, the court of common pleas. *See* 1988 Op. Att’y Gen. No. 88-011, at 2-43 (“[q]uestions of competing concerns before the electorate may be critical to determining whether or when a board might consider bringing requests for additional taxes before the voters, particularly requests for special levies”). However, the likelihood that a township will propose a levy before the electorate at the same time a county places a tax levy on the ballot to support the court of common pleas is remote.

Yet, if this person, in his capacity as a township trustee, should need to consider whether to place a levy on the ballot for taxes in excess of the ten-mill limitation when a competing levy for the court of common pleas is also at issue, he may be able to remove himself from any deliberations, discussions, or votes upon the tax levy. *See* 1994 Op. Att’y Gen. No. 94-039, at 2-201 (“[p]rior opinions of the Attorney General have determined that when a public officer is exposed to influences that may prevent him from making completely objective, disinterested decisions in a particular matter,

the public officer should abstain from any discussions or votes concerning that matter” if such abstention is possible). A member of a board of township trustees is able to remove himself from any deliberations, discussions, or votes on the tax levy when the board is capable of functioning and performing its statutory duties should one of its members abstain from a matter. *See* 2006 Op. Att’y Gen. No. 2006-003, at 2-27; *see generally 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”). However, in circumstances where a member of a board of township trustees may not abstain, any undue influence that a member of a board of township trustees might exert in deliberating and voting concerning township tax levies for additional funding when the court of common pleas has a levy issue on the ballot may be mitigated by the role the other board members play in the process. Accordingly, the potential conflict of interest with respect to competition for tax moneys generated in excess of the ten-mill limitation is insufficient to find that the positions of member of a board of township trustees and commissioner of jurors are incompatible.

Another potential conflict of interest may occur when the township is a party to a legal proceeding before the court of common pleas. When a legal action involving the township comes before the court of common pleas, the township trustee has an interest in a resolution advantageous to the township. *See, e.g.,* 2014 Op. Att’y Gen. No. 2014-022, at 2-202 (resolution of annexation and detachment proceedings affect the township’s tax base and revenue, which are dependent upon the gain or loss of territory within the township). However, the primary function of a commissioner of jurors is limited to the preparation of potential juror lists, summoning persons for possible jury service, and maintaining documentation of the jury commission’s processes. Any loyalty by this person to the township should not influence the exercise of his jury commissioner duties because the duties of a commissioner of jurors are largely ministerial. *See id.*, at 2-202 to 2-203; *see generally* 2011 Op. Att’y Gen. No. 2011-043, at 2-353 (describing a ministerial duty as “one that involves obedience to instructions or laws instead of discretion, judgment, or skill”).

A commissioner of jurors has no decision-making authority in the resolution of legal actions nor is he in a position to influence the decisions of the jury. The judge instructs the jurors about the law that shall apply to the case, and jurors take an oath to follow these instructions in reaching a verdict. *See generally* Ohio R. Civ. P. 51; Ohio R. Crim. P. 30. Moreover, a commissioner of jurors, as a public official, is presumed to have performed his duties in a regular and lawful manner, absent any evidence to the contrary, thereby maintaining the integrity of the jury selection process. *See State ex rel. Speeth v. Carney; State v. Haines*, No. 9517, 1980 Ohio App. LEXIS 11077, at \*3 (Summit County July 23, 1980) (“jury commissioners are public officers. The law presumes ... the legality and regularity of their official acts in the performance of those duties -- that formal requisites have been complied with and that they have acted within the scope of their authority ... in the absence of circumstances indicating the contrary or until the contrary be shown”); *see also State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d 96, 99, 206 N.E.2d 563 (1965) (“[t]he law does not punish an officeholder for what he ‘could do’ or where there was a ‘possibility’ or opportunity to commit some wrongful act”). Thus, the possibility that a legal action involving the township may come before the court of common pleas does not render these two positions incompatible.

In sum, this person, while serving simultaneously as a member of a board of township trustees and a commissioner of jurors, may be subject to conflicts of interest. However, the conflicts of interest are remote and speculative. In the event conflicts of interest do arise, the conflicts may be sufficiently mitigated or avoided. Accordingly, the fifth question of the compatibility analysis may be answered in favor of compatibility.

**Conclusion**

It is our opinion, and you are hereby advised that a person may serve simultaneously as a member of a board of township trustees and a commissioner of jurors.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General