

OPINION NO. 99-035**Syllabus:**

If a township zoning commission organizes in a manner that provides for the performance of its record-keeping duties, on a rotating basis, by the members of the commission, it is within the discretion of the board of township trustees, in determining the amount of compensation, if any, zoning commission members are to receive, to decide whether an additional sum should be paid for the performance of those record-keeping duties. Any additional sum paid to commission members for the performance of the duties of commission secretary must be commensurate with the additional duties performed by the commission member. (1957 Op. Att'y Gen. No. 1052, p. 482, modified, because of statutory amendment.)

To: James J. Mayer, Jr., Richland County Prosecuting Attorney, Mansfield, Ohio
By: Betty D. Montgomery, Attorney General, June 9, 1999

You have requested an opinion whether a member of a township zoning commission who is appointed under R.C. 519.04 and who also serves as secretary of the commission may be paid compensation, apart from the amount the member is paid for serving as zoning commission member, for serving as secretary of the commission. According to information provided by a member of your staff, you are asking about a situation in which a township zoning commission's members are paid a fixed amount per meeting of the commission. Members of the commission rotate the duties of "secretary" for the commission and are paid an additional ten dollars for each meeting for which they perform the duties of secretary. You suggest that the additional duties performed by the secretary relate primarily to the keeping of minutes of the commission's meetings.

Let us begin by examining the statutes governing the formation and operation of a township zoning commission and the manner in which compensation is provided for commission members. Pursuant to R.C. 519.04, each board of township trustees that proceeds with township zoning under R.C. Chapter 519 "shall create and establish a township zoning commission," consisting of five members who are residents of the unincorporated area of the township. The organization and powers of a township zoning commission are set forth in R.C. 519.05, in part, as follows:

The township rural zoning commission shall submit a plan, including both text and maps, representing the recommendations of the zoning commission for the carrying out by the board of township trustees of the powers, purposes, and provisions set forth in [R.C. 519.01-.99], including additions to territory in which a township zoning plan is in effect.

The zoning commission *may*, within the limits of the moneys appropriated by the board for the purpose, *employ or contract with such* planning consultants and executive and *other assistants as it deems necessary*. The zoning commission *shall organize*, adopt rules for the transaction of its business, and *keep a record of its actions and determinations*. Members of the zoning commission *may be allowed their expenses, or such compensation, or both, as the board may approve and provide*. No township trustee shall be employed by the zoning commission of his township. (Emphasis added.)

Pursuant to R.C. 519.05, among the duties of a township zoning commission is the requirement that it "keep a record of its actions and determinations." The zoning commission about which you ask appears to contemplate that each member, when acting as commission "secretary," will perform the commission's record-keeping function required by R.C. 519.05. Your question concerns whether zoning commission members may be paid a sum, in addition to the sum each member is paid for attending commission meetings, for performing the duties of zoning commission secretary.

As mentioned in your letter of request, the question you ask was addressed in 1957 Op. Att'y Gen. No. 1052, p. 482, which considered whether a member of a township zoning commission may serve as secretary to the commission and, if so, whether the member may be compensated for his services as secretary. 1957 Op. Att'y Gen. No. 1052, p. 482, concluded in the syllabus that, "[a]lthough a member of the township zoning commission may properly serve as the secretary of such commission he may *not* be compensated for his services rendered in his capacity as secretary." (Emphasis added.)

In finding that a zoning commission member may perform the duties of secretary of the commission, 1957 Op. Att'y Gen. No. 1052, p. 482, reasoned as follows:

The additional services or duties performed by the commissioner would be a mere *ex-officio* extension of his statutory duties as an incumbent commissioner. These mere *additional duties are germane to his office* and, therefore, give rise to no problem of incompatibility of offices. The election by the commission of a secretary from the membership of the commission, would be a proper exercise of the mandatory duty to organize and keep a record of commission actions and determinations.

1957 Op. Att'y Gen. No. 1052, p. 482, at 483. The opinion thus characterized the duties performed by the zoning commission's secretary as merely additional duties germane to the office of zoning commission member. On that basis, "the election by the commission of a secretary from the membership of the commission, would be a proper exercise of the mandatory duty to organize and keep a record of commission actions and determinations." *Id.*

1957 Op. Att'y Gen. No. 1052, p. 482, then considered the separate question whether a zoning commission member who performed the duties of secretary could receive a salary for the performance of such duties. 1957 Op. Att'y Gen. No. 1052, p. 482, noted that former

R.C. 519.05 provided that members of a zoning commission were to serve without compensation.¹ After having characterized the duties of secretary as a mere extension of a member's duties as commission member, the opinion addressed the compensation issue based upon the assumption that the duties of secretary would be those of an employee of the commission, rather than an extension of a commission member's duties.² Based upon this assumption, the 1957 opinion found that "a commissioner serving as secretary may not be compensated for the latter service, for the reason that to do so would contravene public policy." *Id.* at 483. As explained in the opinion, "there is a general principle of public policy that, unless specifically authorized by law, a member of an administrative board may not be appointed by it to a salaried position under its authority." *Id.* at 483-84 (quoting 1910-1911 Op. Att'y Gen. (March 29, 1910), p. 322, at 322-23). See *State ex rel. Louthan v. Taylor*, 12 Ohio St. 130, 134 (1861) ("[t]he word *appoint*, when used in connection with an office, *ex vi termini*, implies the conferring of authority upon *another*" (emphasis in original)). 1957 Op. Att'y Gen. No. 1052, p. 482, thus found that public policy prohibits a commission member from being paid to perform the duties of commission secretary if the latter position is a salaried position under the authority of the commission on which the member serves.

We concur with the portion of 1957 Op. Att'y Gen. No. 1052, p. 482, that finds that a zoning commission member may perform the duties of commission secretary. R.C. 519.05 does not specify whether the zoning commission's actions and determinations must be recorded personally by the members of the commission, or whether the commission "may, within the limits of the moneys appropriated by the board [of township trustees] for the purpose, employ or contract with" an assistant to perform the duties of secretary to the commission. Because a zoning commission may provide for its own organization, and absent specific direction as to the manner in which a township zoning commission shall organize, it is within the discretion of the commission to determine whether its record-keeping duties will be performed by a member of the commission or by an employee of the board. See generally *State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 122 N.E. 39 (1918) (a public officer is required to exercise an intelligent discretion in the performance of his official duty); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner").

We must, however, separately reconsider the issue of compensating zoning commission members for the performance of the duties of commission secretary. As mentioned in your letter, 1957 Op. Att'y Gen. No. 1052, p. 482, relied upon an earlier version of R.C. 519.05 that provided no compensation for township zoning commission members. However, R.C. 519.05 currently provides, in pertinent part, that "[m]embers of the zoning commission may be allowed their expenses, or such compensation, or both, as the board [of township

¹ 1957 Op. Att'y Gen. No. 1052, p. 482, failed to consider an amendment to R.C. 519.05 in 1956-1957 Ohio Laws 363 (Am. S.B. 403, eff. Sept. 17, 1957), that became effective only three days prior to the issuance of the opinion. The amendment added language to R.C. 519.05 authorizing compensation for township zoning commission members.

² 1957 Op. Att'y Gen. No. 1052, p. 482, apparently did not find it necessary separately to state that, because a zoning commission member was not, under former R.C. 519.05, entitled to be compensated for serving as a member of the commission, a commission member would not be entitled to receive compensation for the performance of duties, such as those of secretary, that were merely an extension of the other duties of commission member.

trustees] may approve and provide." Accordingly, members of township zoning commissions are now entitled to receive compensation, as authorized and provided by the board of township trustees, for the performance of their duties as zoning commission members. Should a particular zoning commission organize itself in such a way that its members perform the duties of commission secretary as a mere extension of their duties as zoning commission members, we can find no reason why the township trustees could not consider this assignment of duties in fixing the compensation of the zoning commission members.

It is our understanding that the zoning commission about which you ask has its members, rather than a commission employee, perform the duties of commission secretary on a rotating basis. The township trustees would like to establish the compensation of zoning commission members as a set fee for attendance at each zoning commission meeting, as well as an additional sum payable to whichever member performs the duties of secretary for any of such meetings. Because R.C. 519.05 empowers the township trustees to determine what compensation, if any, is payable to zoning commission members, it is within the discretion of the board of township trustees to determine whether a zoning commission member who performs the additional duties of zoning commission secretary will be paid a sum for the performance of such duties, in addition to the amount payable to commission members for attendance at commission meetings. *See* 1980 Op. Att'y Gen. No. 80-024 (syllabus) ("[p]ursuant to R.C. 5901.04, a member of a county soldiers' relief [(now veterans service)] commission who is selected as executive director of the commission and is given responsibility for the daily operation of the soldiers' relief program may receive compensation in an amount that exceeds the amount paid to the other members of the commission, provided that such amount is fair and the service performed by the executive director is proportionately greater than that performed by the other commissioners"); 1930 Op. Att'y Gen. No. 1651, vol. I, p. 435 (syllabus) (finding that a Soldiers' Relief [(now veterans service)] Commission member who served as secretary to the commission "may be allowed a reasonable compensation for services rendered in the performance of the duties of the commission" in addition to the compensation paid to other commission members whose duties are not as burdensome as those of the secretary).

Based upon the current language of R.C. 519.05, we, therefore, modify the portion of 1957 Op. Att'y Gen. No. 1052, p. 482, that concludes that a zoning commission member is not entitled to receive compensation for serving as secretary of the commission, and conclude, instead, that if a township zoning commission organizes in a manner that provides for the performance of its record-keeping duties, on a rotating basis, by the members of the commission, it is within the discretion of the board of township trustees, in determining the amount of compensation, if any, zoning commission members are to receive, to decide whether an additional sum should be paid for the performance of those record-keeping duties. The additional sum paid to commission members for the performance of the duties of commission secretary must, however, be commensurate with the additional duties performed by the commission member. *See* 1980 Op. Att'y Gen. No. 80-024.

It is, therefore, my opinion, and you are hereby advised, that if a township zoning commission organizes in a manner that provides for the performance of its record-keeping duties, on a rotating basis, by the members of the commission, it is within the discretion of the board of township trustees, in determining the amount of compensation, if any, zoning commission members are to receive, to decide whether an additional sum should be paid for the performance of those record-keeping duties. Any additional sum paid to commission members for the performance of the duties of commission secretary must be commensurate with the additional duties performed by the commission member. (1957 Op. Att'y Gen. No. 1052, p. 482, modified, because of statutory amendment.)