July 19, 2011

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park—Second Floor
Mansfield, Ohio 44902

SYLLABUS: 2011-027

A township fiscal officer may assume the duties associated with the position of secretary to the board of township trustees but may not receive additional compensation for doing so.

MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

July 19, 2011

OPINION NO. 2011-027

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park—Second Floor
Mansfield, Ohio 44902

Dear Prosecutor Mayer:

You have requested an opinion whether a township fiscal officer may assume the duties associated with the position of secretary to the board of township trustees (township secretary) and receive additional compensation for doing so. Your question concerns a situation in which the township fiscal officer will not separately hold the position of township secretary.[1] Instead, the position of township secretary will remain vacant or be abolished and the township fiscal officer will receive extra compensation for performing the duties associated with the position of township secretary.

---

[1] In a letter dated December 28, 2001, we informed you that R.C. 2921.42(A)(4) prohibits an elected township officer from knowingly having an interest in the profits or benefits of any person's employment, or a contract for the employment of any person, by the township. *See also* R.C. 511.13 (no township officer "shall be interested in any contract entered into by [the] board" of township trustees). The letter also advised you that this prohibition may bar a township clerk (now township fiscal officer) from serving simultaneously in the position of township secretary within the same township. *See, e.g.*, Ohio Ethics Comm'n, Advisory Op. No. 2001-001 (syllabus, paragraph 1) (a city council member may not serve as a volunteer for the city fire department when he receives a definite and direct personal pecuniary benefit from such service); Ohio Ethics Comm'n, Advisory Op. No. 99-002, slip op. at 3 ("[t]he Ethics commission has held that R.C. 2921.42(A)(4) prohibits an elected officer of a political subdivision from simultaneously holding compensated employment with his own political subdivision because an employment relationship between a political subdivision and a public employee is a 'public contract' for purposes of R.C. 2921.42"); Ohio Ethics Comm'n, Advisory Op. No. 91-002 (a city council member is prohibited from holding compensated employment with the city's fire department); *see also* Ohio Ethics Comm'n, Advisory Op. No. 92-012, slip op. at 2 ("[t]he Ethics Commission has consistently held that an employment relationship between a political subdivision and an employee is a 'public contract' for purposes of R.C. 2921.42 since the political subdivision is purchasing or acquiring the services of the employee").

A Township Fiscal Officer May Assume the Duties Associated with the Position of Township Secretary

The position of township secretary is not created by statute. Instead, pursuant to its general authority to appoint "employees as are necessary" to perform the functions and duties of the township, a board of township trustees may create the position of township secretary. R.C. 511.10. This authority also includes the implied power to establish the duties and responsibilities of the township secretary, which, as a general matter, include handling correspondence, keeping various records, and managing routine matters for the board of township trustees. *See State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 12, 112 N.E. 138 (1915) (when an officer is directed by the constitution or a statute to perform a particular duty, in the absence of specific directions covering in detail the manner and method of doing it, the officer "has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method" of performing the duty), *aff'd*, 241 U.S. 565 (1916); 1984 Op. Att'y Gen. No. 84-036 at 2-113 n.3 ("[a] public officer or board or commission, to whom specific duties are granted must be found to have those implied powers necessary to the execution of those duties"); 1979 Op. Att'y Gen. No. 79-093 at 2-291 (R.C. 3745.02 allows the Environmental Board of Review (now the Environmental Review Appeals Commission) "to employ persons who are necessary for the performance of its duties.[2] The General Assembly has limited neither the type of personnel that may be employed nor the type of duties that may be performed by such personnel. Therefore, there is no prohibition against construing the above provision to include the authority to employ hearing examiners" (footnote added)); *Merriam-Webster's Collegiate Dictionary* 1122 (11th ed. 2005) (a "secretary" is someone who is "employed to handle correspondence and manage routine and detail work for a superior" or serves as "an officer of an organization or society responsible for its records and correspondence").

If a board of township trustees creates the position of township secretary, but later fails to appoint a person to the position or abolishes the position, the board may, among other things, assign the duties and responsibilities of the position to another township employee or to one of its members. *See* 2005 Op. Att'y Gen. No. 2005-016 at 2-160 (if a county discontinues funding for the position of county administrator, the board of county commissioners has the discretion to determine whether the duties associated with the position of county administrator will be performed by a county commissioner or another county employee). Further, nothing in Ohio law prevents a township fiscal officer from assuming the duties associated with the position of township secretary.[3]

---

[2] R.C. 3745.02 states, in part, that the Environmental Review Appeals Commission "may employ such other employees as are necessary to perform its duties."

[3] A board of township trustees may not *require* a township fiscal officer to assume the duties associated with the position of township secretary since the township fiscal officer is elected pursuant to R.C. 507.01. *See* 1986 Op. Att'y Gen. No. 86-057 at 2-311; 1960 Op. Att'y Gen. No. 1151, p. 94, at 96.

In fact, the performance of the township secretary's duties by the township fiscal officer would be an ex-officio extension of the fiscal officer's statutory duty to serve as a secretary for the township and keep records for the board of township trustees. *See* R.C. 507.04(A) ("[t]he township fiscal officer shall keep an accurate record of the proceedings of the board of township trustees at all of its meetings, and of all its accounts and transactions"); R.C. 507.05 ("[t]he township fiscal officer shall, in addition to the books for the record of the proceedings of the board of township trustees, be provided by the township with a book for the record of township roads, a book for the record of marks and brands, and a book for the record of official oaths and bonds of township officers"); R.C. 507.08 (the township fiscal officer shall record the bonds of constables in the book kept for that purpose); R.C. 519.16 ("[t]he township fiscal officer may be appointed secretary of the township zoning commission, secretary of the township board of zoning appeals, and zoning inspector"); R.C. 5575.09 ("[t]he board of township trustees shall provide the township fiscal officer with a suitable book in which the fiscal officer shall keep a complete record of proceedings for the construction, reconstruction, resurfacing, or improvement of public roads"); *State ex rel. Osborn v. Mitchell*, 22 Ohio C.C. 208, 210, 12 Ohio Cir. Dec. 288 (Cuyahoga County 1901) ("[t]he clerk of the township is clerk of the board of trustees, and to file any paper with a board when the board is not in session is to file it with the clerk of the board"); 1952 Op. Att'y Gen. No. 1290, p. 260, at 261 ("[t]he township clerk [(now township fiscal officer)] is clerk of the board of township trustees and his powers and duties are generally of a secretarial nature"). Accordingly, a township fiscal officer may assume the duties associated with the position of township secretary. *See generally* 2005 Op. Att'y Gen. No. 2005-016 at 2-160 (a county commissioner may assume the duties of county administrator since "the performance of the county administrator's duties by a county commissioner would be an ex-officio extension of his statutory duties as an incumbent commissioner"); 1957 Op. Att'y Gen. No. 1052, p. 482, at p. 483 (modified on the basis of statutory amendment by 1999 Op. Att'y Gen. No. 99-035) ("I see no reason why one of the commissioners [of a township zoning commission] may not serve as secretary of the commission. The additional services or duties performed by the commissioner would be a mere *ex-officio* extension of his statutory duties as an incumbent commissioner").

A Township Fiscal Officer May Not Receive Additional Compensation for Assuming the Duties Associated with the Position of Township Secretary

We now come to whether a township fiscal officer who assumes the duties associated with the position of township secretary may receive additional compensation for doing so. R.C. 507.09(A) and (D) require a township fiscal officer to be paid a fixed amount of compensation in accordance with a schedule based on the budget of the township in which he serves.[4] *See* 1992 Op. Att'y Gen. No. 92-007 at 2-19.

---

[4] The General Assembly has set forth situations in which a township fiscal officer may receive less than the fixed amount of compensation prescribed in R.C. 507.09(A) and (D). *See, e.g.*, R.C. 507.02 (when a board of township trustees appoints a deputy fiscal officer, "[t]he board shall, by resolution, adjust and determine the compensation of the fiscal officer and deputy fiscal officer. The total compensation of both the fiscal officer and any deputy fiscal officer shall not exceed the sums

A township fiscal officer also may receive additional compensation when he assumes certain, additional responsibilities or performs particular services for the public. *See, e.g.*, R.C. 505.32 ("[f]or the services arising in each fiscal year under [R.C. 505.27-.33 (solid waste disposal districts)], the township fiscal officer shall be allowed the compensation fixed by the board of township trustees"); R.C. 515.12 (when a township provides lighting in the unincorporated territory of the township, "[t]he township fiscal officer shall receive for the fiscal officer's services the sum of fifty cents from each lot or land owner for whom a notice is prepared and the sum of fifty cents for each annual assessment certified to the county auditor…. The compensation shall be in addition to all other compensation provided by law"); R.C. 519.16 ("[t]he township fiscal officer may be appointed secretary of the township zoning commission, secretary of the township board of zoning appeals, and zoning inspector, and the fiscal officer may receive compensation for the fiscal officer's services in addition to other compensation allowed by law"); R.C. 5575.09 (for making a complete record of proceedings for the construction, reconstruction, resurfacing, or improvement of public roads, a township "fiscal officer shall receive ten cents for each one hundred words, and, for all other services in connection with keeping the record, the fiscal officer shall receive the reasonable compensation allowed by the board").

No statute, however, authorizes a township fiscal officer to receive additional compensation when he assumes the duties associated with the position of township secretary. Absent such statutory authority, a township fiscal officer may not receive additional compensation when he assumes the duties associated with the position of township secretary. *See State ex rel. Lyne v. Kennedy*, 90 Ohio St. 75, 86, 106 N.E. 773 (1914) ("county officers shall derive no other emolument from their offices than the definite salary prescribed by law"); *Rogers v. City of Cincinnati*, 6 Ohio App. 218, 224, 1916 Ohio App. LEXIS 123 (Hamilton County 1916) ("[i]t is the settled law of this state that a public officer elected or appointed cannot receive any additional compensation by reason of the fact that additional duties are imposed on him or assumed by him, unless the legislature has expressly provided that such additional compensation may be paid"); 2005 Op. Att'y Gen. No. 2005-016 at 2-158 n.4 ("additional compensation may not be accepted by a public officer" unless there is statutory authority to do so); 1930 Op. Att'y Gen. No. 1532, vol. I, p. 274, at 275 ("[i]t is a fundamental proposition of law that officers are entitled to only such fees or compensation as are specifically provided by law"); 1912 Op. Att'y Gen. No. 525, vol. II, p. 1394, at 1395 ("the township clerk [(now township fiscal officer)], acting as clerk of the board of health, cannot draw any additional compensation from the township treasury, but is limited to receive only the sum, or sums, which he may be entitled to as township clerk, and in no case, other than where there is legal authority to extra compensation or allowance, can he receive in excess of the maximum amount provided in [G.C. 3308] viz. : $150.00, in any one year"). Therefore, a township fiscal officer who assumes the duties associated with the

---

fixed by [R.C. 507.09] in any one year"); R.C. 507.09(B) ("[a]ny township fiscal officer may elect to receive less than the compensation the fiscal officer is entitled to under division (A) of this section"); R.C. 507.09(C) ("[i]f the office of township fiscal officer is held by more than one person during any calendar year, each person holding the office shall receive payments for only those months, and any fractions of those months, during which the person holds the office").

position of township secretary may not receive additional compensation for doing so. *See generally* 2005 Op. Att'y Gen. No. 2005-016 (syllabus) (if a county commissioner assumes the duties performed by the county administrator, "[t]he commissioner may receive no additional compensation for assuming those duties"); Ohio Ethics Comm'n, Advisory Op. No. 2001-001 (syllabus, paragraph 1) (a city council member may serve "as a volunteer for the city fire department, provided that he receives no definite and direct personal pecuniary benefit from such service").

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a township fiscal officer may assume the duties associated with the position of secretary to the board of township trustees but may not receive additional compensation for doing so.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General