

**OPINION NO. 99-019****Syllabus:**

The positions of township clerk and office administrator for the county prosecuting attorney are compatible.

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**To: James J. Mayer, Jr., Richland County Prosecuting Attorney, Mansfield, Ohio**  
**By: Betty D. Montgomery, Attorney General, March 5, 1999**

You have requested an opinion whether the positions of township clerk and office administrator in the prosecuting attorney's office are compatible. In determining whether two positions are compatible, we consider the following seven questions:

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 the outside employment permissible?
3. Is one office 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 a conflict of interest between the two positions?
6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

1979 Op. Att'y Gen. No. 79-111 at 2-367 and 2-368.

The sixth and seventh questions concern the applicability of charter provisions, ordinances, and federal, state, and local departmental regulations. There are no applicable charter provisions or state or federal regulations. Whether there is an applicable local departmental regulation or ordinance is a matter for the interested parties to determine. We will assume, for purposes of this opinion, that there is no local departmental regulation or ordinance of either the county or township that prohibits a person from serving concurrently in the positions of township clerk and office administrator for the county prosecuting attorney.

The first question asks whether either of the positions is a classified civil service position within the terms of R.C. 124.57. R.C. 124.57 prohibits classified employees and officers from participating in partisan political activity other than to vote and express freely their political views. The position of township clerk is in the unclassified civil service because it is an elected position. *See* R.C. 124.11(A)(1); R.C. 507.01. You have indicated that the position of office administrator is in the unclassified civil service. Neither position is in the classified civil service; thus, the prohibition of R.C. 124.57 does not apply.

The second question asks whether the empowering statutes of either position limit outside employment. No statute prohibits a person from serving simultaneously in the

positions of township clerk and office administrator for the county prosecuting attorney. Question two, therefore, may be answered in the negative.

The third question asks whether one position is subordinate to, or in any way a check upon, the other. A township clerk, as an elected officer, R.C. 507.01, serves and is responsible to the township electorate. As indicated above, the office administrator is employed by the prosecuting attorney. *See* R.C. 309.06. The positions thus operate independently of each other, and neither position is responsible for assigning duties to, or supervising, the other. Accordingly, neither position is subordinate to, or in any way a check upon, the other.

The fourth question asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question, which is best answered by the interested persons because they may more precisely determine the time demands of each position. 1994 Op. Att'y Gen. No. 94-022 at 2-98. It seems likely, however, that the duties of these two positions can be discharged competently by the same person if there is no direct conflict in the working hours of each position. *See generally* 1960 Op. Att'y Gen. No. 1151, p. 94, at 96 ("a board of township trustees is without authority to regulate the duties of the township clerk and thereby require him to be present in the township office certain day-time hours each week").

The final question asks whether there is a conflict of interest between the two positions. 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 public. 1985 Op. Att'y Gen. No. 85-042 at 2-150.

The powers and duties of a township clerk are primarily set forth in R.C. Chapters 507 and 5705. As a general matter, a township clerk records the proceedings of the township trustees, R.C. 507.04, notifies the board of elections of vacancies in township offices and of township boundary changes, R.C. 507.051, administers oaths and certifies affidavits, R.C. 507.06, and records bonds, R.C. 507.08. In addition, the township clerk is designated as the fiscal officer of the township for purposes of R.C. Chapter 5705 (tax levy law). R.C. 5705.01(D). As the township's fiscal officer, the township clerk is delegated various duties and responsibilities related to the financial affairs of the township. *See, e.g.,* R.C. 505.33 (certifies "to the county auditor the names of the property owners and a description of their lands which are delinquent as to waste disposal service charges"); R.C. 507.04 (keeps an accurate record of all the accounts and transactions of the board of township trustees); R.C. 507.07 (prepares an annual statement of receipts and expenditures of the township); R.C. 507.11 (incurs financial obligations on behalf of the township and countersigns all orders for payment of township moneys); R.C. 5705.03 (receives the proceeds of any township tax levy from the county).

An office administrator in the prosecuting attorney's office performs those duties assigned by the prosecuting attorney. *See* R.C. 309.06. In this case, the office administrator supervises the office's clerical staff, prepares the payroll and attendance reports, issues checks and vouchers, and performs other clerical and ministerial duties on behalf of the prosecuting attorney and the first assistant prosecuting attorney.

Given the respective duties of the positions, we believe there is no situation in which the duties of the two positions conflict. Therefore, a person who serves as both a township clerk and office administrator for the county prosecuting attorney is not subject to a conflict of interest.

Based on the foregoing, it is my opinion, and you are hereby advised that the positions of township clerk and office administrator for the county prosecuting attorney are compatible.