

April 15, 2004

The Honorable Amanda Spies Bornhorst
Tuscarawas County Prosecuting Attorney
125 East High Avenue
New Philadelphia, Ohio 44663

SYLLABUS:

2004-015

A person may serve simultaneously as a trustee of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504 and member of a county rural zoning commission.



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OPINION NO. 2004-015

The Honorable Amanda Spies Bornhorst
Tuscarawas County Prosecuting Attorney
125 East High Avenue
New Philadelphia, Ohio 44663

Dear Prosecutor Bornhorst:

You have requested an opinion whether a township trustee may serve as a member of a county rural zoning commission. By way of background, the township has not adopted a limited home rule government pursuant to R.C. Chapter 504¹ or enacted zoning legislation under R.C. Chapter 519.² In addition, the county has not enacted zoning legislation under R.C. 303.01-.25, but is currently contemplating enacting such legislation and creating a county rural zoning commission.³ One of the people being considered for appointment to the zoning commission currently serves as a trustee of a township located within the county.

¹ R.C. 504.01 authorizes a township to adopt a limited home rule government under which the township exercises limited powers of self-government and limited police powers as authorized by R.C. Chapter 504. R.C. 504.04(A) authorizes a limited home rule government township to “[e]xercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws,” and “[a]dopt and enforce within the unincorporated area of the township local police, sanitary, and other similar regulations that are not in conflict with general laws or otherwise prohibited by [R.C. 504.04(B)].”

² A township is authorized, for the purpose of promoting the public health, safety, and morals, and when acting in accordance with a comprehensive plan, to enact and enforce certain types of zoning regulations governing all or any part of the unincorporated territory of the township. R.C. 519.02. Provisions governing the enactment, amendment, and enforcement of zoning regulations by townships are set forth in R.C. Chapter 519.

³ In order to promote the public health, safety, and morals, a county may, in accordance with a comprehensive plan, enact and enforce certain types of zoning regulations in all or any part of the unincorporated territory of the county. R.C. 303.02. Before availing itself of the

Compatibility Test

The following seven-question test is used for determining whether two public positions are compatible:

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. 2003-041 at 2-335 and 2-336.

Questions six and seven of the test relate to the applicability of charter provisions, resolutions, ordinances, and federal, state, and local regulations. With respect to the two positions about which you ask, there are no applicable charter provisions or state or federal regulations. Whether there is an applicable resolution, ordinance, or local departmental regulation is a matter for local officials to determine. For the purpose of this opinion, it is assumed that there is no resolution, ordinance, or local departmental regulation that prevents a person from serving simultaneously in the positions of township trustee and member of a county rural zoning commission.

Discussion of R.C. 124.57

The first question of the compatibility test asks whether either of the positions is a classified employment within the terms of R.C. 124.57, which prohibits an officer or employee in the classified service of the state, or of a county, city, city school district, or civil service township, from taking part in a variety of activities that occur as part of the regular political

zoning powers conferred in R.C. 303.01-.25, a board of county commissioners must pass a resolution declaring its intention to proceed with county zoning under R.C. 303.01-.25, R.C. 303.03, and create and establish a county rural zoning commission, R.C. 303.04.

process and are partisan in nature.⁴ As explained in prior opinions of the Attorneys General, R.C. 124.57 does the following: it prohibits an officer or employee in the classified service from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service.⁵ 2003 Op. Att’y Gen. No. 2003-041 at 2-336; 2001 Op. Att’y Gen. No. 2001-034 at 2-203; *see* 2 Ohio Admin. Code 123:1-46-02(C).

We must first determine whether the position of member of a county rural zoning commission or township trustee is one that is subject to R.C. 124.57’s prohibition. Members of a county rural zoning commission are appointed and removed by the board of county commissioners, R.C. 303.04, and “may be allowed their expenses, or such compensation, or both, as the board may approve and provide[,]” R.C. 303.05. The members of the commission are responsible for preparing a plan representing the recommendations of the commission for the carrying out by the board of county commissioners of the powers, purposes, and provisions of R.C. 303.01-99 (county rural zoning). R.C. 303.05. Because the position of member of a county rural zoning commission holds an administrative relationship to the board of county commissioners, the position is in the unclassified service. *See* R.C. 124.11(A)(9) (“those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination” are in the unclassified service). *See generally* 2 Ohio Admin. Code 123:1-5-01(B)(1) (“[a]dministrative relation—Generally means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the agency, board, or commission must rely on the employee’s personal judgment and leadership

⁴ R.C. 124.57 states, in part:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, 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 thereof, and civil service townships, 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. (Emphasis added.)

⁵ Pursuant to a city charter provision or the terms of a collective bargaining agreement, an officer or employee in the classified service may participate in partisan politics. 2003 Op. Att’y Gen. No. 2003-041 at 2-336 n.7; 1991 Op. Att’y Gen. No. 91-065 (syllabus, paragraph one).

abilities. It is characterized by a position where the employee is in charge of formulating official policy or is in charge of carrying out that policy”).

The position of township trustee is in the unclassified service because, *inter alia*, it is an elected position. *See* R.C. 124.11(A)(1); R.C. 505.01. *See generally* 2003 Op. Att’y Gen. No. 2003-041 at 2-337 and 2-338 (since R.C. 124.57 only applies to officers and employees in the service of civil service townships,⁶ R.C. 124.57 does not apply to a township trustee in the service of a township that is not a civil service township, and since the classified service of a civil service township is limited to persons employed by civil service township police and fire departments, R.C. 124.57 does not apply to a township trustee in the service of a civil service township). Accordingly, the prohibition of R.C. 124.57 does not apply to the positions of township trustee or member of a county rural zoning commission, and, as such, does not operate to prevent a person from holding both of these positions simultaneously.

Statutes Prohibiting the Holding of Another Public Position

The second question of the test asks whether the empowering statutes of either position limit a person from being employed in another public position or holding another public office. Also, in some situations, a provision in the Ohio Constitution may prohibit a person from serving in two public positions simultaneously.

No constitutional provision or statute prohibits a person from serving simultaneously in the positions of township trustee and member of a county rural zoning commission. *Cf.* R.C. 303.05 (“[n]o county commissioner shall be employed by the zoning commission of his county”). The second question thus may be answered in the negative.

Subordination and Control

The third question of the test asks whether one position is subordinate to, or in any way a check upon, the other. The members of a county rural zoning commission are appointed and removed by the board of county commissioners, R.C. 303.04, and are accountable to the board and the citizens of the county. On the other hand, township trustees, as elected township officers, R.C. 505.01, serve and are responsible to the township’s electorate. The positions thus

⁶ As used in R.C. Chapter 124, the term “[c]ivil service township” means any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees, and which has a civil service commission established under [R.C. 124.40(B)].” R.C. 124.01(G). *See generally* R.C. 124.40(B) (“[t]he board of trustees of a township with a population of ten thousand or more persons residing within the township and outside any municipal corporation and which has a police or fire department of ten or more full-time paid employees may appoint three persons who shall constitute the township civil service commission”).

serve different constituencies and are not subordinate to each other. Moreover, the positions operate independently of each other, and neither is required to assign duties to, or supervise, the other. Accordingly, neither position is subordinate to, or in any way a check upon, the other.

Physical Ability to Hold and Serve in Both Positions

The fourth question of the test asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that is best resolved by the interested persons at the local level because they may more precisely determine the time constraints imposed upon the person as a township trustee and as a member of the county rural zoning commission. 2003 Op. Att'y Gen. No. 2003-041 at 2-339.

However, in order to serve simultaneously in these two positions the person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner. *Id.* This means that there may not be a direct conflict between the times when the person is needed to perform duties on behalf of the township and the county. *Id.*

Conflicts of Interest

The final question of the test asks whether there is a conflict of interest between the two positions.⁷ It is well settled that a person may not hold two public positions simultaneously if he will 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 political subdivisions he serves. *Id.* at 2-339 and 2-340.

We must first review the powers, duties, and responsibilities conferred upon a township trustee and a member of a county rural zoning commission to determine whether a person who holds both of these positions is subject to a conflict of interest. Such a review enables us to determine whether the person will confront an impermissible conflict when exercising the powers, duties, and responsibilities in either or both positions. If the review discloses such a conflict, we must then determine the immediacy of the conflict to see whether the conflict may be sufficiently avoided or eliminated entirely so as to allow the person to serve in both positions. Factors used to make this determination include the probability of the conflict, the ability of the person to remove himself from the conflict (should it arise), whether the person exercises

⁷ The Ohio Ethics Commission is authorized under R.C. 102.08 to render advisory opinions regarding the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. Because of this specific statutory grant of authority, the Attorney General will refrain from interpreting and applying these provisions by way of a formal opinion. 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three). Accordingly, questions concerning the interpretation and application of these provisions in the situation in which a person serves simultaneously as a township trustee and member of a county rural zoning commission should be addressed to the Ohio Ethics Commission.

decision-making authority in both positions, and whether the conflict relates to the primary functions of each position, or to financial or budgetary matters. *Id.* at 2-340.

A board of township trustees is responsible for governing the township. As such, the board is delegated by statute various powers and duties related to the government of the township. *See, e.g.*, R.C. Chapter 505 (setting forth the general administrative powers and duties of a board of township trustees); *see, e.g., also* R.C. 504.04 (authorizing the trustees of a township that adopts a limited home rule government to exercise certain home rule powers). The board also handles the township's finances and budget, *see, e.g.*, R.C. 135.04(C); R.C. 135.14; R.C. 5705.28; R.C. 5705.31-.32, and is designated as the township's taxing authority for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law), *see* R.C. 133.01(NN)(7); R.C. 5705.01(C). In addition, the board performs certain duties relating to the township's enactment and enforcement of township zoning regulations. *See, e.g.*, R.C. 519.03 (adopts a resolution declaring its intent to proceed with zoning); R.C. 519.04 (creates and establishes a township zoning commission); R.C. 519.10 (votes upon the adoption of a zoning resolution); R.C. 519.12 (votes to adopt amendments to the zoning resolution); R.C. 519.13 (appoints a township board of zoning appeals); R.C. 519.16 (provides "for a system of zoning certificates, and for this purpose may establish and fill the position of township zoning inspector").

A county rural zoning commission is responsible for the preparation of a county's zoning plan. R.C. 303.05 provides, in part:

The county 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 county commissioners of the powers, purposes, and provisions set forth in [R.C. 303.01-.99], including additions to territory in which a county zoning plan is in effect.

See generally R.C. 303.06 ("[b]efore certifying its recommendations of a zoning plan to the board of county commissioners, the county rural zoning commission shall hold at least one public hearing in each township affected by the proposed zoning plan"); R.C. 303.07 (after submitting the county zoning plan to the county or regional planning commission, if there is one, for approval, disapproval, or suggestions and completing its recommendations for the plan, the county rural zoning commission certifies the plan to the board of county commissioners). A county rural zoning commission also reviews proposed changes to a county zoning plan and submits its recommendations—approval, disapproval, or suggestions—regarding the proposed changes to the board of county commissioners. R.C. 303.09.

A county rural zoning commission, among others, may initiate amendments to a county's zoning resolution,⁸ and is required to transmit to the county or regional planning commission, if there is one, a copy of the materials proposing the amendment, including any text and map pertaining to the proposed amendment. R.C. 303.12. The commission also recommends "the approval or denial of [a] proposed amendment, or the approval of some modification of it" and submits "such recommendation together with such application or resolution, the text and map pertaining to it, and the recommendation of the county or regional planning commission on it to the board of county commissioners." *Id.*

A review of the duties and responsibilities conferred upon a person who serves in the positions of township trustee and member of a county rural zoning commission discloses several instances in which the person will face situations in which his actions as a trustee or commission member will affect the county zoning plan or use of property owned by the township, respectively. First, there may be occasions in which a member of the county rural zoning commission will be required to participate in deliberations, discussions, or votes concerning the adoption or amendment of a county zoning plan that applies to all or part of the unincorporated territory of the township. *See, e.g.,* R.C. 303.05; R.C. 303.07; R.C. 303.09; R.C. 303.12. *See generally* 1964 Op. Att'y Gen. No. 1299, at 2-325 (syllabus) ("[a] township may be made subject to an existing zoning plan in the unincorporated part of a county by the procedures set forth in [R.C. 303.03-.11]"). *See generally also* R.C. 303.22 ("[w]here the people of any township or part thereof have approved township zoning regulations in accordance with [R.C. 519.02-.25] prior to the adoption of a county rural zoning resolution by the board of county commissioners, and the county plan includes any area covered by the township zoning plan, the zoning resolution adopted by the board of township trustees shall take precedence over the zoning resolution adopted by the board of county commissioners, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the township plan of zoning replaced with the plan of county rural zoning"); 1962 Op. Att'y Gen. No. 2963, p. 316 (syllabus, paragraph three) ("[w]here the question of the adoption of county rural zoning is submitted in a township and a part of such township is under township zoning, such township zoning will be replaced by the county zoning plan pursuant to [R.C. 303.22] if such plan is adopted by an affirmative vote in the entire township covered by the county zoning plan and by a majority vote of voters in the area with township zoning within such township"). Because a board of township trustees, which holds title to the township's real property, *see, e.g.,* R.C. 503.01; R.C. 505.26, must, as a general

⁸ R.C. 303.12(A) provides that amendments to a county zoning resolution may be initiated by motion of the county rural zoning commission, by the passage of a resolution by the board of county commissioners, or by the filing of an application by one or more owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the county rural zoning commission.

matter, make a reasonable attempt to comply with any applicable county zoning requirements,⁹ 1985 Op. Att’y Gen. No. 85-074 at 2-292, the person’s loyalty to the township may prevent him from making completely objective and disinterested decisions, as a member of the county rural zoning commission, when participating in deliberations, discussions, or votes concerning the adoption or amendment of a county zoning plan that applies to all or part of the unincorporated territory of the township. *See* 2003 Op. Att’y Gen. No. 2003-010 at 2-72.

In addition, a township trustee may be required to participate in deliberations, discussions, or votes concerning the enactment or repeal of a township zoning resolution. *See, e.g.,* R.C. 519.02; R.C. 519.09; R.C. 519.10; R.C. 519.25; *see also* 2000 Op. Att’y Gen. No. 2000-034. In particular, if there is in effect a county zoning resolution that applies to all or part of the unincorporated territory of the township, the enactment of a township zoning resolution that applies to unincorporated territory of the township covered by the county zoning resolution may repeal all or a portion of the county zoning resolution. *See* R.C. 519.22 (“[w]here the people of any township or part thereof have approved county rural zoning regulations in accordance with [R.C. 303.02-.25] prior to the adoption of a zoning resolution by the board of township trustees, and the township plan includes any area covered by the county rural zoning plan, the zoning resolution adopted by the board of county commissioners shall take precedence over the zoning resolution adopted by the board of township trustees, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the county rural zoning plan replaced with the township plan of zoning”). Also, if there is in effect a township zoning resolution, the board of township trustees may adopt a resolution to repeal the zoning resolution in order to have the territory covered by the township zoning resolution zoned by the county. In such situations, the person’s loyalty to the county rural zoning commission may prevent him from making completely objective and disinterested decisions, as a township trustee, when participating in deliberations, discussions, or votes concerning the enactment or repeal of the township zoning resolution. *See* 2003 Op. Att’y Gen. No. 2003-010 at 2-72.

We do not believe, however, that the occurrence of such situations is sufficient to prevent a person from serving as a township trustee and member of a county rural zoning commission. *See* 1997 Op. Att’y Gen. No. 97-061 at 2-379 (“[t]he fact that a student who serves on a board of education may be in a position to take action that affects him as a student should not bar his

⁹ As concluded in *Brownfield v. State*, 63 Ohio St. 2d 282, 286, 407 N.E.2d 1365 (1980), *overruled in part on other grounds by Racing Guild of Ohio v. Ohio State Racing Comm’n*, 28 Ohio St. 3d 317, 503 N.E.2d 1025 (1986), unless a governmental property owner possesses a direct statutory grant of immunity from compliance with local zoning, it should make a reasonable attempt to comply with local zoning or land use restrictions. *See, e.g.,* 2001 Op. Att’y Gen. No. 2001-002 at 2-15 and 2-16 (“a board of park commissioners that establishes a bike path that passes through a township must make a reasonable attempt to comply with that township’s zoning or land use restrictions, but need not comply with the township’s zoning procedures, *e.g.,* obtaining permits, variances, or zoning changes, before it begins such project”).

service on the board”). *See generally State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d 96, 206 N.E.2d 563 (1965) (syllabus) (“[a] person ... will not be ousted from ... elective office [as a member of a local board of education] by quo warranto, on the ground that by reason of his private occupation he *might possibly or could* secure personal monetary benefits by using his public office in a wrongful manner, it being established by the evidence that said person had not committed, nor was he about to commit, any act or acts in violation of law or violative of his oath of office”). For the reasons that follow, it is appropriate for a person who serves as a township trustee and member of a county rural zoning commission to participate in matters, as a township trustee, that may affect the enactment or repeal of county zoning in the township, or to participate in matters, as a commission member, that may affect the use of real property owned by the township.

As explained in 1997 Op. Att’y Gen. No. 97-061 at 2-379, which advised that a high school student may serve on the board of education of the school district whose schools he attends:

That actions of government affect the governed is basic to our form of government. For example, a mayor has authority over individuals who plow his street and pick up his garbage, but his interest as a citizen does not preclude his proper actions as mayor. Obtaining personal profit or gain from the exercise of a public office is prohibited by statute, but there is no prohibition against securing benefits that are made generally available to the citizenry. Thus, to the extent that a student school board member acts for the public good, there is no prohibition against that student benefiting from improvements to the school system.

In concluding that it is permissible for a student to serve as a school board member, we look at the analogy of a parent who serves as a school board member. A parent is the natural guardian of his or her child and has the legal duty of supporting the child and protecting the child’s rights. A parent who serves on a school board could have an interest in favoring his or her child’s school, principal, or teachers, or in taking action against district employees who do not meet the parent’s expectations. Nonetheless, it is common for parents to serve on boards of education. Their relationship with the schools provides them with an interest in performing their duties well, and personal benefits are limited by applicable statutory provisions and by the ability to abstain in particular situations. (Citations omitted.)

With respect to your specific inquiry, actions by a member of a county rural zoning commission affect not only real property owned by the township, but all real property owned or leased by persons and entities within the territory subject to county zoning. This includes real property owned or leased by a member of the county rural zoning commission. Thus, a member of a county rural zoning commission may find himself participating in deliberations, discussions, and votes concerning zoning matters that will affect real property he owns or leases. As in the case of the 1997 opinion, however, the fact that a commission member owns or leases real property within territory covered by a county rural zoning plan does not in and of itself

disqualify him from participating in such matters as a member of the county rural zoning commission. *See generally Hamilton v. Bd. of Comm'rs of Hardin County*, 108 Ohio St. 566, 141 N.E. 684 (1923) (syllabus) (“[t]he fact that a county commissioner owns real estate within the assessable area of an improvement to be taxed by a special assessment for the construction of a road does not of itself disqualify him to act as a county commissioner in proceedings relative to laying out and making a road under [G.C.] 6906” (now R.C. 5555.02)); *Goodwin v. Comm'rs of Van Wert County*, 41 Ohio St. 399 (1884) (ownership of land crossed by a ditch did not disqualify a county commissioner from participating in voting upon the order authorizing the ditch); *State ex rel. Huffman v. Shuff*, 20 Ohio App. 432, 152 N.E. 300 (Knox County 1925) (syllabus, paragraph one) (“[a] county commissioner is not disqualified to act in a matter of the improvement of a public highway merely by reason of the fact that he has farm property which will be increased in value by the improvement”); Joint Legislative Ethics Comm., Advisory Op. No. 98-001 (syllabus, paragraph three) (“R.C. 102.031(B)¹⁰ does not prohibit a member of the General Assembly who is employed by an institution of higher education, as a professor, from voting on legislation that is being actively advocated by the college or university” (footnote added)).

If a member of a county rural zoning commission who serves as a township trustee is permitted to participate in matters that affect the use of real property he owns or leases, it reasonably follows that he may participate in matters that may affect the use of real property owned by the township. Accordingly, to the extent that a member of a county rural zoning commission who serves as township trustee acts for the good of the county, there is no prohibition against the commission member participating in deliberations, discussions, and votes that may affect the use of real property owned by the township.

Similarly, actions on zoning matters taken by a township trustee can affect real property owned or leased by the trustee. A township trustee thus may find himself participating in deliberations, discussions, and votes pertaining to zoning matters that will affect real property he owns or leases. Again, however, the fact that a township trustee owns or leases real property within the township does not in and of itself disqualify the trustee from participating in township

¹⁰ R.C. 102.031(B) provides as follows:

No member of the general assembly shall vote on any legislation that the member knows is then being actively advocated if the member is one of the following with respect to a legislative agent or employer that is then actively advocating on that legislation:

- (1) An employee;
- (2) A business associate;
- (3) A person, other than an employee, who is hired under contract to perform certain services and such position involves a substantial and material exercise of administrative discretion in the formulation of public policy.

zoning matters. *See generally Hamilton v. Bd. of Comm'rs of Hardin County; Goodwin v. Comm'rs of Van Wert County; State ex rel. Huffman v. Shuff*; Joint Legislative Ethics Comm., Advisory Op. No. 98-001 (syllabus, paragraph three).

If a township trustee who serves as a member of a county rural zoning commission is permitted to participate in matters that affect the use of real property the trustee owns or leases, we see no reason why the trustee may not participate in zoning matters that may precipitate the enactment or repeal of county zoning in the township. In either situation the trustee's participation may affect the trustee's use of real property he owns or leases.

In addition, the enactment or repeal of a township zoning resolution is voted on by the township electorate. R.C. 519.11; R.C. 519.25; *see* R.C. 519.22. The township electorate, rather than the board of township trustees, thus ultimately decides whether a township zoning resolution is enacted or repealed. Therefore, to the extent that a township trustee who serves as a member of a county rural zoning commission acts for the good of the township's citizens, there is no prohibition against the trustee participating in deliberations, discussions, and votes on zoning matters that may precipitate the enactment or repeal of county zoning in the township.

In light of the foregoing, the fact that a person who serves in the positions of township trustee and member of a county rural zoning commission will face situations in which his decisions may precipitate the enactment or repeal of county zoning in all or a portion of the township or affect the use of real property owned by the township, respectively, does not subject the person to impermissible conflicts of interest that render the two positions incompatible. *See* 1997 Op. Att'y Gen. No. 97-061 at 2-377 through 2-379. *See generally State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph ten) (“[i]n 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”); 1983 Op. Att'y Gen. No. 83-037 at 2-141 (“I realize that there exists the potential for abuse in a situation such as you describe. However, this office must assume, in the absence of evidence to the contrary, that all parties are acting in good faith, and in accordance with the law”). Accordingly, we conclude that a person may serve simultaneously as a trustee of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504 and member of a county rural zoning commission.¹¹

¹¹ 1985 Op. Att'y Gen. No. 85-074 advised that the positions of township trustee and county zoning inspector are incompatible when the county zoning plan covers all or part of the unincorporated territory of the township. The opinion reasoned that, “[t]he ability of the township trustees to initiate changes which modify the county zoning plan directly affects the duties of a county zoning inspector by modifying the area over which the zoning inspector has authority.” *Id.* at 2-291. The opinion also stated that, if the township is governed by the county zoning plan, an impermissible conflict of interest exists because the person, as a county zoning

Conclusion

In conclusion, it is my opinion, and you are hereby advised that a person may serve simultaneously as a trustee of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504 and member of a county rural zoning commission.

Respectfully,



JIM PETRO
Attorney General

inspector, is required to enforce the county zoning plan against the township and “may be required to initiate legal action against [the] township for a violation or proposed violation of the zoning plan pursuant to R.C. 303.24.” *Id.* at 2-292.

We agree with the conclusion of 1985 Op. Att’y Gen. No. 85-074, but we do not believe that its reasoning extends to a situation in which a person serves simultaneously in the positions of township trustee and member of a county rural zoning commission. Unlike a county zoning inspector, a member of a county rural zoning commission is not responsible for enforcing county zoning regulations or initiating legal actions to obtain a township’s compliance with county zoning regulations. *Compare* R.C. 303.05 (a county rural zoning commission is responsible for the preparation of county zoning plans) *with* R.C. 303.16 (for the purpose of enforcing county zoning regulations, a board of county commissioners may employ a county zoning inspector) *and* R.C. 303.24 (only a board of county commissioners, prosecuting attorney, county zoning inspector, county building inspector, or an adjacent or neighboring property owner who would be specifically damaged by the violation of a county zoning regulation may initiate legal action to obtain compliance with a county zoning regulation). In addition, any action taken by a board of township trustees to enact a township zoning resolution that applies to unincorporated territory of the township covered by a county zoning resolution occurs after the county rural zoning commission has prepared the county zoning plan. *See* R.C. 519.22. It thus follows that the enactment of a township zoning resolution in such a situation does not greatly affect or modify the duties of the county rural zoning commission. Accordingly, 1985 Op. Att’y Gen. No. 85-074 does not require us to find that the positions of township trustee and member of a county rural zoning commission are incompatible.