OPINION NO. 93-067

Syllabus:

An individual may simultaneously hold the positions of member of the school board of a nonpublic school and member of the board of education of an exempted village school district, provided the individual, as a member of the board of education of an exempted village school district, does not participate in discussions or vote upon a resolution concerning the provision of transportation for resident school pupils to and from the public or nonpublic school which they attend.

To: Charles L. Bartholomew, Wyandot County Prosecuting Attorney, Upper Sandusky, Ohio
By: Lee Fisher, Attorney General, December 21, 1993

You have requested an opinion whether the positions of member of the board of education of an exempted village school district and member of the school board of a nonpublic school are compatible. 1989 Op. Att'y Gen. No. 89-037 established a five-question test for determining whether a public and private position may be held simultaneously. The five questions are as follows:

1. Is the public position a classified employment within the terms of R.C. 124.57?

2. Do statutes governing either position limit the outside employment possible?

3. Is there a conflict of interest between the two positions?

4. Are there local charter provisions or ordinances which are controlling?

5. Is there a federal, state, or local departmental regulation applicable?

Op. No. 89-037 at 2-163 and 2-164.

R.C. 124.57

Question number one asks whether the public position is a classified employment within the terms of R.C. 124.57, which prohibits classified employees and officers from participating in partisan political activity. A member of the board of education of an exempted village school district, as an elected officer, R.C. 3313.01, is in the unclassified service. *See* R.C. 124.11(A)(1). Thus, R.C. 124.57 does not prohibit a member of the board of education of an exempted village school district from serving simultaneously as a member of the school board of a nonpublic school.

Outside Employment

Question number two asks whether the statutes governing either position limit the outside employment possible. There is no statute prohibiting the simultaneous holding of the positions of member of the school board of a nonpublic school and member of the board of education of an exempted village school district. Thus, the second question can be answered in the negative.

Conflict of Interest

Question number three asks whether there is a conflict of interest between the two positions. "A public servant may not simultaneously hold an additional position which would subject him or her to divided loyalties and conflicting duties or to the temptation to act other than in the best interests of the public." Op. No. 89-037 at 2-164.

Research discloses at least one instance in which the duties of member of the school board of a nonpublic school and member of the board of education of an exempted village school district are in conflict. Pursuant to R.C. 3327.01, a board of education of an exempted village school district may decide whether to provide transportation for resident school pupils to and from the nonpublic school which they attend:

> In all city, local, and exempted village school districts where resident school pupils in grades kindergarten through eight live more than two miles from the school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and to which they are assigned by the board of education of the district of residence or *to and from the nonpublic school which they attend the board of education shall provide transportation for such pupils to and from school except when, in the judgment of such board, confirmed by the state board of education, such transportation is unnecessary or unreasonable.*
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> In all city, local, and exempted village school districts the board *may provide transportation* for resident school pupils in grades nine through twelve to and from the high school to which they are assigned by the board of education of the district of residence or *to and from the non-public high school which they attend* for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code.
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> In determining the necessity for transportation, availability of facilities and distance to the school shall be considered. (Emphasis added.)

In practice, if the board of education of an exempted village school district decides to provide transportation for resident school pupils to and from the school which they are assigned by the board, the board must also provide transportation for resident school pupils to and from the nonpublic school which they attend.

Because the individual, as a member of the board of education of an exempted village school district, may be required to vote on whether to provide transportation for resident school pupils to and from the public or nonpublic school which they attend, the individual serving simultaneously as a member of the school board of a nonpublic school and member of the board of education of an exempted village school district is exposed to influences that may prevent him from making completely objective, disinterested decisions. As a member of the school board of the nonpublic school, the individual has, as a general matter, an interest in the transportation of pupils to and from the nonpublic school. In view of such interest, the individual, as a member of the board of education of an exempted village school district, may be predisposed to vote in favor of providing public transportation for resident school pupils to and from the public or nonpublic school which they attend. A potential conflict of interest thus exists because the individual is subject to influences that may prevent him from discharging objectively and in a completely disinterested fashion the duties of member of the board of education of an exempted village school district. *See generally* 1980 Op. Att'y Gen. No. 80-035 at 2-149 (a conflict of interest occurs 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").

It is a well established rule that two positions will not be considered incompatible where a potential conflict of interest is remote and speculative. 1993 Op. Att'y Gen. No. 93-016 at 2-91; 1979 Op. Att'y Gen. No. 79-111 at 2-372. Factors used in determining whether a potential conflict of interest will render two positions incompatible include the degree of remoteness of a potential conflict, the ability or inability of an individual to remove himself from the conflict, whether the potential conflict involves the primary functions of each position, and whether the potential conflict may involve budgetary controls. Op. No. 79-111 at 2-372.

With respect to your specific inquiry, it is certainly possible that the individual, as a member of the board of education of an exempted village school district, will be required to participate in discussions or vote upon a resolution concerning the provision of transportation for resident school pupils to and from the public or nonpublic school which they attend. Nonetheless, since the board of education of an exempted village school district has five members, R.C. 3313.01, it would be simple and practicable for the individual to remove himself from the conflict of interest by abstaining from voting upon or discussing the provision of transportation to resident school pupils who attend a public or nonpublic school within the district. Finally, the potential conflict does not involve either the primary functions of each position or budgetary controls. Therefore, the possibility that the board of education of the exempted village school district might have to address the issue of providing transportation for resident school pupils to and from the public or nonpublic school which they attend does not render incompatible the positions of member of the school board of a nonpublic school and member of the board of education of an exempted village school district.

There also exists the potential for abuse when an exempted village school district and a nonpublic school compete for the same students or community of students. Although there exists the potential for abuse, it is assumed, in the absence of evidence to the contrary, that the individual is acting in good faith, and in accordance with the law. *See* 1985 Op. Att'y Gen. No. 85-099 at 2-420 and 2-421; 1983 Op. Att'y Gen. No. 83-037 at 2-141; *see also State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d 96, 206 N.E.2d 563 (Cuyahoga County 1965) (syllabus) ("[a] person, whose private vocation is that of owner and manager of a teachers' placement agency, duly elected to office as a member of a local board of education and who continues in said private occupation after his election, will not be ousted from said elective office 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"). It follows, therefore, that the possibility that the individual, as a member of the board of education of an exempted village school district, would be influenced in the performance of his duties by the fact that he serves on the school board of a nonpublic school does not bar the individual from simultaneously serving as a member of the school board of a nonpublic school and member of the board of education of an exempted school district.

Local Legislation and Departmental Regulations

Questions four and five raise issues of local legislation and departmental regulations, and it is assumed, for purposes of this opinion, that there are no local departmental regulations, charter provisions, or ordinances that limit the holding of outside employment by a member of the school board of a nonpublic school or a member of the board of education of an exempted village school district. There are no applicable state or federal departmental regulations.

Conclusion

It is, therefore, my opinion and you are hereby advised that an individual may simultaneously hold the positions of member of the school board of a nonpublic school and member of the board of education of an exempted village school district, provided the individual, as a member of the board of education of an exempted village school district, does not participate in discussions or vote upon a resolution concerning the provision of transportation for resident school pupils to and from the public or nonpublic school which they attend.

OPINION NO. 93-068

Syllabus:

R.C. 505.43 authorizes a township to enter into a contract with a municipal corporation or county sheriff for a law enforcement officer to implement within a local school district that serves the township a program designed to educate children with respect to the dangers associated with the use of illicit drugs.

To: Robert D. Horowitz, Stark County Prosecuting Attorney, Canton, Ohio
By: Lee Fisher, Attorney General, December 21, 1993

You have requested an opinion regarding the implementation of a drug awareness program in a local school district. Specifically, you ask whether R.C. 505.43 authorizes a township to enter into a contract with a municipal corporation or county sheriff for the services of a police officer or deputy sheriff to implement within a local school district that serves the township a program designed to educate children with respect to the dangers associated with the use of illicit drugs.

R.C. 505.43

R.C. 505.43, which empowers a township to contract for police protection services, provides, in pertinent part, as follows:

> *In order to obtain police protection*, or to obtain additional police protection in times of emergency, any township may enter into a contract with one or more townships, *municipal corporations*, park districts created pursuant to section 511.18 or 1545.01 of the Revised Code, or *county sheriffs* or with a governmental entity of an adjoining state upon any terms that are agreed to by them, *for services of police departments* or use of police equipment, or the interchange of the service of police departments or use of police equipment within the several territories of the contracting subdivisions, if the contract is first authorized by respective boards of township trustees or other legislative bodies. The cost of the contract may be paid for from the township general fund or from funds received pursuant to the passage of a levy authorized pursuant to division (J) of section 5705.19 and section 5705.25 of the Revised Code. (Emphasis added.)

Thus, a township may, in order to obtain police protection, enter into a contract with a municipal corporation or county sheriff for the services of police officers or deputy sheriffs. Accordingly, if the implementation of a program designed to educate children with respect to