October 18, 2006

The Honorable C. David Warren
Athens County Prosecuting Attorney
Athens County Court House
First Floor
Athens, Ohio 45701

SYLLABUS: 2006-042

Pursuant to R.C. 3.06(A) and R.C. 5715.02, a deputy county auditor or treasurer may serve in place of the county auditor or treasurer, respectively, on a hearing board of the county board of revision for the purpose of hearing complaints as to the value of real property for taxation. (1925 Op. Att'y Gen. No. 2573, p. 406, overruled, and 1944 Op. Att'y Gen. No. 6935, p. 276 (syllabus, paragraph one), approved and followed.)

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OPINION NO. 2006-042

The Honorable C. David Warren
Athens County Prosecuting Attorney
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Dear Prosecutor Warren:

You have requested an opinion whether a deputy county auditor or treasurer may serve in place of the county auditor or treasurer, respectively, on a hearing board of the county board of revision when the auditor or treasurer is subject to a conflict of interest that prevents the auditor or treasurer from hearing a complaint as to the value of real property for taxation.[1] Based on R.C. 3.06(A) and R.C. 5715.02, a deputy county auditor or treasurer may serve in place of the county auditor or treasurer, respectively, on a hearing board of the county board of revision for the purpose of hearing complaints as to the value of real property for taxation.

Pursuant to R.C. 5715.01(B), every county has a county board of revision, which hears valuation complaints and revises assessments of real property for taxation. *See* R.C. 5715.02; R.C. 5715.11-.13; R.C. 5715.16; R.C. 5715.19. The members of the county board of revision are the county treasurer, county auditor, and the president of the board of county commissioners.

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[1] A county auditor or treasurer may abstain from participating in the hearing of a complaint as to the value of real property for taxation when it would be difficult for the auditor or treasurer to exercise his discretion in the matter in a completely unbiased manner because of his relationship to the person or organization bringing the complaint. *See generally* 2004 Op. Att'y Gen. No. 2004-025 at 2-228 (a public officer has a duty to abstain from participating in any matter that would impair his objectivity); 1969 Op. Att'y Gen. No. 69-059 (a member of a county board of revision may not participate in the hearing of a complaint when there is an overriding natural inclination to prejudge the complaint). When a county auditor or treasurer abstains from participating in a hearing, the county board of revision may, if a quorum exists, conduct the hearing and render its judgment. *See* R.C. 5715.02 ("[a] majority of a county board of revision or hearing board shall constitute a quorum to hear and determine any complaint, and any vacancy shall not impair the right of the remaining members of such board, whether elected officials or appointees, to exercise all the powers thereof so long as a majority remains").

R.C. 5705.02. In order to perform its duty to hear complaints as to the value of real property for taxation, the county board of revision may create hearing boards to hear valuation complaints:

> The county treasurer, county auditor, and the president of the board of county commissioners shall constitute the county board of revision, or they may provide for one or more hearing boards when they deem the creation of such to be necessary to the expeditious hearing of valuation complaints. *Each such official may, appoint one qualified employee from his office to serve in his place and stead on each such board for the purpose of hearing complaints as to the value of real property only*, each such hearing board has the same authority to hear and decide complaints and sign the journal as the board of revision, and shall proceed in the manner provided for the board of revision by [R.C. 5715.08-.20]. Any decision by a hearing board shall be the decision of the board of revision. (Emphasis added.)

R.C. 5715.02. R.C. 5715.02 thus authorizes a county auditor and treasurer to appoint an employee of his office to serve in his place and stead on a hearing board of the county board of revision for the purpose of hearing complaints as to the value of real property for taxation.

The word "employee" is not defined for purposes of R.C. 5715.02. When a word is left undefined by the General Assembly, it is to be accorded its common, everyday meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449 (1983). In ordinary usage, the word "employee" means a person who works under the supervision and control of another person for wages or salary. *Merriam-Webster's Collegiate Dictionary* 408 (11th ed. 2005); *Black's Law Dictionary* 564 (8th ed. 2004); *see State ex rel. Newman v. Skinner*, 128 Ohio St. 325, 191 N.E. 127 (1934).

Deputy county auditors and treasurers are appointed by, and serve at the pleasure of, county auditors and county treasurers, respectively. *See* R.C. 3.06(A); R.C. 319.05; R.C. 321.04; R.C. 325.17; 2004 Op. Att'y Gen. No. 2004-019 at 2-157; 1999 Op. Att'y Gen. No. 99-045 at 2-279. These deputies are hired and compensated by county auditors and county treasurers to perform duties on their behalf. *See* R.C. 3.06(A); R.C. 319.05; R.C. 325.17. *See generally Black's Law Dictionary* 474 (8th ed. 2004) (a deputy is "[a] person appointed or delegated to act as a substitute for another, esp. for an official"). Deputy county auditors and treasurers therefore are "employees," as commonly defined, since such deputies work under the supervision and control of county auditors and county treasurers for compensation. *See generally* R.C. 325.17 (county auditors and county treasurers "may appoint and employ the necessary *deputies* … *or other employees* for their respective offices" (emphasis added)); [2005-2006 Monthly Record] Ohio Admin. Code 123:1-47-01(A)(28), at p. 4140 (for purposes of Ohio Administrative Code Chapters 123:1-1 through 123:1-47, which govern the administration of government employees, "'[d]eputy'—[m]eans an *employee* authorized by law to act generally for or in place of his or her principal and holding a fiduciary relationship to such principal, or an *employee* holding a fiduciary or administrative relationship to the agency" (emphasis added)).

Because county deputy auditors and treasurers are employees, as commonly defined, of county auditors and county treasurers, respectively, R.C. 5715.02 authorizes county auditors and treasurers to appoint such deputies to serve on hearing boards of county boards of revision. Accordingly, pursuant to R.C. 5715.02, a deputy county auditor or treasurer may serve in place of the county auditor or treasurer, respectively, on a hearing board of the county board of revision for the purpose of hearing complaints as to the value of real property for taxation.

You explain in your letter that 1925 Op. Att'y Gen. No. 2573, p. 406 determined that neither a deputy county auditor nor a deputy county treasurer may act in place of a county auditor or treasurer, respectively, on the county budget commission[2] or the county board of revision. In reaching this conclusion, the opinion relied on the rule that "a deputy may perform a purely ministerial duty of his principal but that he may not exercise a duty enjoined upon his principal which is of a judicial or quasi-judicial nature or a duty requiring the exercise of judgment or discretion." 1925 Op. Att'y Gen. No. 2573, p. 406, at 407. Because the Attorney General determined that the duties of a county board of revision required the exercise of judgment or discretion and were of a quasi-judicial nature,[3] *id.* at 408, he advised that neither a deputy county auditor nor deputy county treasurer could perform those duties on behalf of his principal.

Opinions issued after the 1925 opinion, however, noted that, under G.C. 9 (now R.C. 3.06), a deputy county auditor or treasurer could perform *all* of the duties of his principal.[4] *See, e.g.*, 1944 Op. Att'y Gen. No. 6935, p. 276; 1934 Op. Att'y Gen. No. 3605, vol. III, p. 1721; 1931 Op. Att'y Gen. No. 3791, vol. III, p. 1417; 1931 Op. Att'y Gen. No. 3506, vol. II, p. 1072. In light of this statutory authority, 1931 Op. Att'y Gen. No. 3791, vol. III, p. 1417 and 1934 Op.

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[2] The county budget commission consists of the county auditor, the county treasurer, and the county prosecuting attorney. R.C. 5705.27.

[3] Some courts have stated that, "[i]t is well settled that the valuation of property for the purposes of tax levies is ministerial and administrative in character." *Selig v. Bd. of Revision of Mahoning Cty.*, 12 Ohio App. 2d 157, 167, 231 N.E.2d 479 (Mahoning County 1967); *accord Stanton v. State Tax Comm'n*, 114 Ohio St. 658, 670-71, 151 N.E. 760 (1926).

[4] G.C. 9, as set forth in the 1910 General Code, provided, in part, that "[a] deputy, when duly qualified, may perform all and singular the duties of his principal." *See* S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of the State of Ohio, Commissioners of Public Printing 1910) (setting forth the statutes of the General Code). *See generally* 1910 Ohio Laws 39 (H.B. 348, approved Mar. 29, 1910) (the statutes of Ohio shall be published by the state and officially designated as "The General Code"); 1906 Ohio Laws 221 (S.B. 31, passed Apr. 2, 1906) (preamble) ("[t]o provide for the revision and consolidation of the statute laws of Ohio"). In the 1953 recodification of the Revised Code, 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953), G.C. 9 became R.C. 3.06.

Att'y Gen. No. 3605, vol. III, p. 1721 questioned the reasoning of the 1925 opinion[5] and determined that a deputy county auditor or treasurer could serve in place of his principal on the county budget commission. *See generally* 1984 Op. Att'y Gen. No. 84-074 at 2-240 ("[w]here the proper execution of a public office requires that the officer exercise his own judgment or discretion, the presumption is that the particular officer was chosen because he was deemed fit and competent to exercise that judgment or discretion. In such cases, the officer cannot delegate his duties to another, *unless the power to so substitute another in his place has been expressly or impliedly granted to the officer*" (emphasis added) (quoting 1977 Op. Att'y Gen. No. 77-064 at 2-232)).

In addition, the first syllabus paragraph of 1944 Op. Att'y Gen. No. 6935, p. 276, relying on the reasoning of the 1931 and 1934 opinions, concluded that a deputy county auditor is authorized by G.C. 9 to serve on or sit as a member of a county board of revision in the absence of the county auditor. While this opinion did not expressly state that it was overruling any part of the 1925 opinion, it reasonably follows that the 1944 opinion, on the basis of the 1931 and 1934 opinion's interpretation of G.C. 9, overruled the conclusion of 1925 Op. Att'y Gen. No. 2573, p. 406 that a county deputy auditor may not serve in place of the county auditor on the county board of revision.

For the reasons that follow, we affirm the conclusion reached in the first syllabus paragraph of 1944 Op. Att'y Gen. No. 6935, p. 276 and expressly overrule 1925 Op. Att'y Gen. No. 2573, p. 406. Language analogous to that set out in former G.C. 9 appears in R.C. 3.06. This language provides, in part, that "[a] deputy, when duly qualified, may perform *any* duties of his principal." R.C. 3.06(A) (emphasis added). The use of the word "any" in R.C. 3.06(A) signifies that a deputy county auditor or treasurer may, when qualified, perform *all* of the duties of his principal, including serving in place of the county auditor or treasurer, respectively, on the county board of revision. *See generally* 2000 Op. Att'y Gen. No. 2000-046 at 2-283 ("[w]here a statute uses the word 'any' to modify a noun without selection, distinction, or limitation, it is presumed that the legislative intent is that the noun modified by 'any' be treated as a whole class without division into smaller classes, and that 'any' may be equated to mean 'all' or 'every' in that context, especially where the statute uses mandatory language").

Moreover, after the issuance of the 1925 and 1944 opinions, the General Assembly amended R.C. 5715.02 for the purpose of explicitly empowering county auditors and treasurers to appoint their deputies or other employees to serve on hearing boards of county boards of revision for the purpose of hearing complaints as to the value of real property for taxation. *See*

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[5] Although 1944 Op. Att'y Gen. No. 6935, p. 276, at 277-78 states that 1931 Op. Att'y Gen. No. 3791, vol. III, p. 1417 and 1934 Op. Att'y Gen. No. 3605, vol. III, p. 1721 overruled the conclusion of 1925 Op. Att'y Gen. No. 2573, p. 406 that a deputy county auditor or treasurer may not serve in place of his principal on the county budget commission, neither the 1931 nor the 1934 opinion explicitly overruled any part of the 1925 opinion.

1969-1970 Ohio Laws, Part I, 643 (Am. Sub. S.B. 194, eff. Nov. 19, 1969); 1959 Ohio Laws 442 (Am. S.B. 379, eff. Oct. 12, 1959). By amending R.C. 5715.02 in this manner, the General Assembly legislatively overruled 1925 Op. Att'y Gen. No. 2573, p. 406 and removed any doubt as to the propriety of a county auditor or treasurer appointing a deputy to serve in his place on a hearing board of the county board of revision. Accordingly, pursuant to R.C. 3.06(A) and R.C. 5715.02, a deputy county auditor or treasurer may serve in place of the county auditor or treasurer, respectively, on a hearing board of the county board of revision for the purpose of hearing complaints as to the value of real property for taxation. *See generally* 1977 Op. Att'y Gen. No. 77-064 (syllabus, paragraph one) ("[t]he Director of Environmental Protection, the Director of Health and the Director of Development may, pursuant to R.C. 121.05, designate their assistant directors or deputy directors to serve in their place as members of the Ohio Power Siting Commission").

In conclusion, it is my opinion, and you are hereby advised that, pursuant to R.C. 3.06(A) and R.C. 5715.02, a deputy county auditor or treasurer may serve in place of the county auditor or treasurer, respectively, on a hearing board of the county board of revision for the purpose of hearing complaints as to the value of real property for taxation. (1925 Op. Att'y Gen. No. 2573, p. 406, overruled, and 1944 Op. Att'y Gen. No. 6935, p. 276 (syllabus, paragraph one), approved and followed.)

Respectfully,

JIM PETRO
Attorney General