

June 30, 2008

The Honorable Jeffrey A. Strausbaugh
Defiance County Prosecuting Attorney
607 West Third Street
Defiance, Ohio 43512

SYLLABUS:

2008-022

1. A person may not serve simultaneously as a member of the board of education of a local school district and district administrator for a county soil and water conservation district within the same county when the person, as district administrator, prepares the county soil and water conservation district's budget.
2. A person may not serve simultaneously as a township zoning inspector and member of the board of education of a local school district within the same county when real property of the local school district is located within the township.
3. A person may not serve simultaneously as a township zoning inspector and district administrator for a county soil and water conservation district within the same county when the person, as district administrator, oversees conservation projects in the township.
4. A person may not serve simultaneously as a member of the board of education of a local school district, district administrator for a county soil and water conservation district, and township zoning inspector within the same county when real property of the local school district is located within the township and the person, as district administrator, oversees conservation projects in the township and prepares the county soil and water conservation district's budget.



Nancy H. Rogers
Attorney General
State of Ohio

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

June 30, 2008

OPINION NO. 2008-022

The Honorable Jeffrey A. Strausbaugh
Defiance County Prosecuting Attorney
607 West Third Street
Defiance, Ohio 43512

Dear Prosecutor Strausbaugh:

You have requested an opinion whether potential conflicts of interest prohibit a person from serving simultaneously in the positions of township zoning inspector, member of the board of education of a local school district, and district administrator for a county soil and water conservation district when the township, local school district, and county soil and water conservation district are all located within the same county. For the reasons discussed below, we reach the following conclusions:

1. A person may not serve simultaneously as a member of the board of education of a local school district and district administrator for a county soil and water conservation district within the same county when the person, as district administrator, prepares the county soil and water conservation district's budget.
2. A person may not serve simultaneously as a township zoning inspector and member of the board of education of a local school district within the same county when real property of the local school district is located within the township.
3. A person may not serve simultaneously as a township zoning inspector and district administrator for a county soil and water conservation district within the same county when the person, as district administrator, oversees conservation projects in the township.
4. A person may not serve simultaneously as a member of the board of education of a local school district, district administrator for a county soil and water conservation district, and township zoning inspector within the

same county when real property of the local school district is located within the township and the person, as district administrator, oversees conservation projects in the township and prepares the county soil and water conservation district's budget.

Conflict of Interest Rule

In Ohio a person may not serve simultaneously in multiple public positions when the person is subject to impermissible conflicts of interest. 2003 Op. Att'y Gen. No. 2003-010 at 2-70; 2002 Op. Att'y Gen. No. 2002-039 at 2-249; 2002 Op. Att'y Gen. No. 2002-012 at 2-66. Impermissible conflicts of interest occur when the duties of the positions subject a person who holds the positions at the same time to divided loyalties, conflicting duties, or the temptation to act other than in the public's best interest. 2006 Op. Att'y Gen. No. 2006-034 at 2-309; 2003 Op. Att'y Gen. No. 2003-010 at 2-70.

Resolution of your question, therefore, requires us to first review the powers, duties, and responsibilities of the positions of township zoning inspector, member of the board of education of a local school district, and district administrator for a county soil and water conservation district. This review will enable us to evaluate whether there are any conflicts of interest between the positions when a person exercises the powers, duties, and responsibilities of the positions at the same time. *See* 2006 Op. Att'y Gen. No. 2006-034 at 2-309. If the review reveals any conflicts of interest, we must next determine the immediacy of the conflicts to see whether the conflicts may be sufficiently avoided or eliminated entirely so as to allow the person to serve simultaneously in the positions. *Id.* The pertinent factors used in making this determination include, but are not limited to, the probability of the conflicts, the ability of the person to remove himself from the conflicts (should the conflicts arise), whether the person exercises decision-making authority in the positions, and whether the conflicts relate to the primary functions of the positions, or to financial or budgetary matters. *Id.*

Duties of a Member of a Board of Education, District Administrator for a County Soil and Water Conservation District, and Township Zoning Inspector

The powers, duties, and responsibilities of a member of the board of education of a local school district relate to the administration of the public schools in the district and control over the district's fiscal and budgetary matters. In order to perform its duties, a board of education may, among other things, enter into contracts and acquire, hold, possess, and dispose of real and personal property on behalf of the school district, R.C. 3313.17; R.C. 3313.37; R.C. 3313.39; R.C. 3313.40; R.C. 3313.41, establish rules for the government of the district, R.C. 3313.20, manage and control the public schools in its school district, R.C. 3313.47, provide for the free education of youths of the school district at the most convenient places for the attendance of the largest number of youths, R.C. 3313.48, and employ superintendents, teachers, and other necessary employees, R.C. 3313.47; R.C. 3319.01; R.C. 3319.07. As to financial and budgetary matters, a board of education is the school district'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)(3);

R.C. 5705.01(C). In this capacity, a board of education may issue securities for the purpose of providing funds with which to pay one or more final judgments rendered against the school district, R.C. 133.14, issue securities for the purpose of paying all or any portion of the costs of any permanent improvement that the school district is authorized to acquire, improve, or construct, R.C. 133.15, prepare the school district's annual tax budget, R.C. 5705.28, and levy taxes and assessments on real property within the school district, R.C. 133.56; R.C. 5705.03; R.C. 5705.07; R.C. 5705.194; R.C. 5705.21; R.C. 5705.212; R.C. 5705.213.

The duties and responsibilities of a district administrator for a county soil and water conservation district are established by the district's board of supervisors. *See generally* R.C. 1515.05 (“[e]ach soil and water conservation district shall be administered by a board consisting of ... five supervisors”); R.C. 1515.09 (“[t]he supervisors of a soil and water conservation district may employ assistants and such other employees as they consider necessary and may provide for the payment of the reasonable compensation of such assistants and employees and expenses incurred by them in the discharge of their duties from the special fund established for the district pursuant to [R.C. 1515.10]”). You have provided us with a job description for the position of district administrator in question, which reads, in relevant part, as follows:

[The] position is responsible for day-to-day operation of the District program/staff and is under the direction/policies set by the District Board of Supervisors to insure the growth and accountability of the District in its responsibility for the conservation of the natural resources in Defiance County and the state of Ohio.

....

Duties and Responsibilities

- 1.) In cooperation with various federal, state, and local agencies develop the need for conservation work within the District and recommends actions and programs to meet these goals.
- 2.) Prepares a draft annual plan of work.
- 3.) Prepares a draft long-range business plan to set direction of the District into the future with goals/vision of the conservation of natural resources of the District (5 year plan).
- 4.) Identifies sources and recommends actions to the Board of Supervisors to secure operating funds for the District.
- 5.) Prepare proposed budget for Board of Supervisors' review and final approval.
- 6.) Oversees day-to-day expenditures of the District and stays within budgetary guidelines.
- 7.) Identifies sources and recommend action to the Board of Supervisors to secure the needed personnel for District operations. Develop staffing plan with staff's responsibilities.
- 8.) Supervises and directs personnel....

....

- 18.) Keeps abreast of all federal, state, and local laws that affect the conservation work within the District and review changes with the Board of Supervisors.
....
- 20.) Oversee all work by District staff, set priorities of staff to accomplish annual plan of work and long-range business plan.
....
- 23.) Carryout and install conservation projects/programs with private/public landowners on private/public lands on a voluntary approach and education.

See generally R.C. 1515.08 (setting forth the powers of a county soil and water conservation district's board of supervisors). The district administrator in question thus is primarily responsible for overseeing all the projects of the county soil and water conservation district, preparing the district's budget, and handling the day-to-day fiscal matters of the district.

The duties and responsibilities of the final position, township zoning inspector, emanate from R.C. 519.16. This statute states that, for the purpose of enforcing its zoning regulations,¹ a

¹ R.C. 519.02(A) authorizes a board of township trustees to enact zoning regulations in the unincorporated territory of the township:

Except as otherwise provided in this section, in the interest of the public health and safety, the board of township trustees may regulate by resolution, in accordance with a comprehensive plan, the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board by resolution, in accordance with a comprehensive plan, may regulate the location of, set back lines for, and the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township, and may establish reasonable landscaping standards and architectural standards excluding exterior building materials in the unincorporated territory of the township. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board may regulate by resolution, in accordance with a comprehensive plan, for nonresidential property only, the height, bulk, number of stories, and size of

“board of township trustees may provide for a system of zoning certificates, [and] may establish and fill the position of township zoning inspector.”² A township zoning inspector therefore is responsible for enforcing the township’s zoning regulations. 1952 Op. Att’y Gen. No. 1289, p. 257, at 260. *See generally* R.C. 519.17 (“[n]o person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate, if required under [R.C. 519.16], and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect”); R.C. 519.23 (“[n]o building shall be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, and no land shall be used in violation of any resolution, or amendment or supplement to such resolution, adopted by any board of township trustees under [R.C. 519.02-.25]. Each day’s continuation of a violation of this section may be deemed a separate offense”).

Conflicts of Interest Between the Positions of Member of the Board of Education and District Administrator

A review of the powers, duties, and responsibilities of the positions discloses an impermissible conflict of interest between the positions of member of the board of education of a local school district and district administrator for a county soil and water conservation district when the local school district and county soil and water conservation district are located within the same county. An impermissible conflict of interest occurs because of competition over tax moneys generated within the ten-mill limitation.³ *See generally* R.C. 1515.10 (“[t]he board of

buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, sizes of yards, courts, and other open spaces, and the density of population in the unincorporated territory of the township.

² R.C. 519.16 provides that “[t]he township fiscal officer may be appointed ... [township] zoning inspector.” In such a situation, the township zoning inspector would be required to perform the duties of the township fiscal officer. Because you have not asked about the existence of potential conflicts of interest when the person in question serves as a township fiscal officer, we presume that the person does not serve as, or perform the duties of, a township fiscal officer.

³ The 10-mill limitation is established by Ohio Const. art. XII, § 2 and R.C. 5705.02. Ohio Const. art. XII, § 2 states, in part: “No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value,” except that laws may be passed to reduce taxes for certain homesteads on the basis of age or disability. R.C. 5705.02 states that “[t]he aggregate

county commissioners of each county in which there is a soil and water conservation district may levy a tax within the ten-mill limitation and may appropriate money from the proceeds of the levy.... The money shall be held in a special fund for the credit of the district”); R.C. 5705.03(A) (authorizing a local school district to levy within the ten-mill limitation property taxes for the purpose of paying the current operating expenses of the school district); R.C. 5705.05(E) (without prejudice to the generality of the authority to levy a general tax for any current expense, a general levy for current operating expenses shall include, “[i]n the case of counties, the amounts necessary for the ... support of soil and water conservation districts”).

Except as provided in R.C. 5705.28(B) or R.C. 5705.281,⁴ the taxing authority of a county soil and water conservation district, as a taxing unit, R.C. 5705.01(H), and a local school district, as a subdivision, R.C. 5705.01(A), are required to prepare and adopt annual tax budgets and submit those budgets to the county budget commission. R.C. 5705.28(A); *see also* R.C. 5705.29-.32. After the annual tax budgets are submitted, the county budget commission revises and adjusts the estimate of balances and receipts from all sources for each fund within the tax budgets submitted to the commission and adjusts tax levies within the ten-mill limitation. R.C. 5705.31; R.C. 5705.32. Adjustments to tax levies by the county budget commission create competition between a county soil and water conservation district and local school district for tax moneys generated within the ten-mill limitation.

As a member of the board of education of a local school district, the person is required to participate in the preparation and adoption of the school district’s annual tax budget. *See* R.C. 5705.01(A), (C); R.C. 5705.28(A). In addition, according to the job description for the position of district administrator, the person is required to annually prepare the county soil and water conservation district’s budget. The person thus is required to participate in the preparation of competing annual tax budgets, and, as such, could be subject to influences that may prevent him from making completely objective, disinterested decisions. *See* 2003 Op. Att’y Gen. No. 2003-006 at 2-35.

As explained in 1999 Op. Att’y Gen. No. 99-027 at 2-182, which considered the compatibility of the positions of assistant county prosecuting attorney and member of the legislative authority of a city, a conflict of interest occurs when a person is required to take a position on behalf of one entity to the potential detriment of the other:

amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof.”

⁴ R.C. 5705.28(B)(2)(a) provides that “[t]he taxing authority of a taxing unit that does not levy a tax is not required to adopt a tax budget pursuant to [R.C. 5705.28(A)].” R.C. 5705.281 authorizes the county budget commission to waive the requirement that the taxing authority of a subdivision or taxing unit adopt a tax budget pursuant to R.C. 5705.28(A).

If the same person prepares both the county's and city's tax budgets and explains them to the county budget commission, a conflict of interest is present because he must advocate a position on behalf of one to the potential detriment of the other. An argument that the county or city is entitled to a certain level of funds means a reduced level of funds are available for the other's use. Accordingly, the competition for advantageous budget decisions could subject a person who holds the positions of assistant prosecuting attorney and member of the legislative authority of a city to influences that may prevent him from making completely objective decisions. (Citation omitted.)

Accord 1999 Op. Att'y Gen. No. 99-043 at 2-264.

A review of the immediacy of the potential conflict of interest resulting from competition over tax moneys generated within the ten-mill limitation when a person serves concurrently in the positions of member of the board of education of a local school district and district administrator for a county soil and water conservation district reveals that the conflict may not be eliminated entirely or avoided sufficiently. As stated previously, the person is responsible for preparing an annual budget in each position. The handling of funding and budgetary matters is a primary function of the person as a member of the board of education and district administrator and must be attended to on a regular basis. The preparation of a local school district's and county soil and water conservation district's budget also requires the exercise of decision-making authority and involves budgetary controls. Finally, it is impractical for either a member of a board of education of a local school district or a district administrator for a county soil and water conservation district to continually remove himself from funding and budgetary matters since such matters arise regularly and involve a primary duty of each position. A person who simultaneously holds, within the same county, the positions of member of the board of education of a local school district and district administrator for a county soil and water conservation district is thus subject to an impermissible conflict of interest because of the competition for tax moneys generated within the ten-mill limitation. *See* 1999 Op. Att'y Gen. No. 99-043 at 2-265. Accordingly, a person may not serve simultaneously as a member of the board of education of a local school district and district administrator for a county soil and water conservation district within the same county when the person, as district administrator, prepares the county soil and water conservation district's budget.

Conflicts of Interest Between the Positions of Member of the Board of Education and Township Zoning Inspector

Our review of the powers, duties, and responsibilities of the positions also discloses an impermissible conflict of interest between the positions of member of the board of education of a local school district and township zoning inspector because the board of education, as the body responsible for managing and controlling the real property of the school district, *see, e.g.*, R.C. 3313.17; R.C. 3313.37; R.C. 3313.39; R.C. 3313.40; R.C. 3313.41; R.C. 3313.47, must attempt to comply with all applicable township zoning or land use restrictions in the use of its real property located within the township. *See Brownfield v. State*, 63 Ohio St. 2d 282, 407 N.E.2d

1365 (1980), *overruled in part on other grounds by Racing Guild of Ohio, Local 304 v. Ohio State Racing Comm'n*, 28 Ohio St. 3d 317, 503 N.E.2d 1025 (1986); 2001 Op. Att’y Gen. No. 2001-002 at 2-13; 1985 Op. Att’y Gen. No. 85-098 at 2-414 and 2-415; 1985 Op. Att’y Gen. No. 85-074 at 2-292. *See generally* R.C. 519.02 (authorizing a board of township trustees to enact and enforce zoning regulations in the unincorporated territory of the township).

As explained in 2001 Op. Att’y Gen. No. 2001-002 at 2-13 and 2-14:

[u]nless 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. [Brownfield,] at 286, 407 N.E.2d at 1368. As explained by the court in Taylor v. Ohio Dept. of Rehabilitation & Correction, 43 Ohio App. 3d 205, 209, 540 N.E.2d 310, 314-15 (Franklin County 1988):

Brownfield requires the condemning or land-owning authority to attempt to comply with zoning *land-use* restrictions. The condemning authority must use reasonable efforts to comply with existing zoning land-use schemes or plans but need not comply with existing procedures to obtain permits, variances or changes in existing zoning from local authorities as a prerequisite to the exercise of state governmental functions that the state authority is required by law to perform. *Brownfield*, although not explicit in defining the term “zoning restrictions” in the two-step test, refers several times to attempted compliance with “*land-use schemes.*” Never does *Brownfield* mention or contemplate compliance with local zoning *procedures* to obtain an exception to current zoning use restrictions.

The *Brownfield* court continued by explaining that, should the governmental property owner’s attempt at compliance be unsuccessful, it may nonetheless be immune from the zoning or land use restrictions if it determines that such compliance “would frustrate or significantly hinder,” the public purpose for which it purchased the property. 63 Ohio St. 2d at 286, 407 N.E.2d at 1368. The factors to be considered in making such a determination include, among other things, “the essential nature of the government-owned facility, the impact of the facility upon surrounding property, and the alternative locations available for the facility,” *id.* at 286-87, 407 N.E.2d at 1368.

In the event that the governmental property owner determines that compliance with local zoning or land use restrictions would frustrate or significantly hinder its use of the property, it may proceed with the proposed use, “unless enjoined by a court of competent jurisdiction which determines that the [governmental property owner] is not entitled to immunity from local zoning

restrictions pursuant to [*Brownfield*].” *Taylor v. Ohio Dept. of Rehabilitation & Correction* (syllabus). (Emphasis added and footnotes omitted.)

See also 1985 Op. Att’y Gen. No. 85-098 (syllabus, paragraph one) (“[t]he board of education of a local school district must attempt to comply with village zoning regulations with respect to signs which the board is required to erect and maintain pursuant to R.C. 3313.20. If compliance with the village zoning regulations would frustrate or hinder the public purpose underlying the use of the board’s property in accordance with R.C. 3313.20, a court must balance the competing governmental interests of the board of education and the village”).

No statute of which we are aware has conferred upon a board of education of a local school district immunity from township zoning restrictions. In the absence of such a statutory grant of immunity, the board of education of a local school district must make a reasonable attempt to comply with township zoning or land use restrictions in the use of its real property located within the township. *See Brownfield*; 2001 Op. Att’y Gen. No. 2001-002 at 2-13; 1985 Op. Att’y Gen. No. 85-098 at 2-414 and 2-415; 1985 Op. Att’y Gen. No. 85-074 at 2-292.

Pursuant to R.C. 519.16, a township’s zoning and land use restrictions are enforced by the township zoning inspector. *See* 1952 Op. Att’y Gen. No. 1289, p. 257, at 260. A person who serves as a township zoning inspector and a member of the board of education of a local school district thus is statutorily required, as a township zoning inspector, to determine whether the board of education is in compliance with the township’s zoning and land use restrictions when the local school district has real property in the township. In addition, the person, as a township zoning inspector, may be required to initiate or participate in legal action against the board of education for a violation or proposed use in violation of the township’s zoning plan pursuant to R.C. 519.24.⁵ *See* 1985 Op. Att’y Gen. No. 85-098 (syllabus, paragraph one). In such situations a conflict of interest exists because the person, as a township zoning inspector, is subject to influences that may prevent him from making completely objective, disinterested decisions. *See*

⁵ R.C. 519.24 provides as follows:

In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used or any land is or is proposed to be used in violation of [R.C. 519.01-.99] or of any regulation or provision adopted by any board of township trustees under such sections, such board, the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use. The board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section.

1985 Op. Att’y Gen. No. 85-074 at 2-292; 1981 Op. Att’y Gen. No. 81-090 at 2-343 and 2-344; *see also* 2006 Op. Att’y Gen. No. 2006-003 at 2-33 (“a person who serves at the same time as a township trustee and member of the board of directors of a port authority may be required to participate in deliberations, discussions, negotiations, or votes concerning legal matters between the township and port authority, and, as such, may be subject to divided loyalties”); 2004 Op. Att’y Gen. No. 2004-051 at 2-449 (“if a city fireman who serves as a county commissioner were required to examine and investigate county buildings or structures for fire and safety hazards or to take such action as is necessary to ensure the safety of the public in such buildings or structures, it would be difficult for the person as a fireman to set aside his loyalty to the county when making decisions pertaining to the safety of county buildings and structures. Such a predisposition of loyalty could prevent the person from making completely objective and disinterested decisions or result in preferential treatment being accorded to the board of county commissioners”).

An examination of the foregoing conflicts of interest discloses that the conflicts can not be eliminated entirely or sufficiently avoided so as to allow a person to serve simultaneously in the positions of township zoning inspector and member of the board of education of a local school district that has real property in the township. The enforcement of the township’s zoning and land use restrictions is the primary function of the township zoning inspector. *See* R.C. 519.16; R.C. 519.24. It is a statutorily imposed duty that requires the exercise of decision-making authority on the part of a person holding the position of township zoning inspector. *See* R.C. 519.16; R.C. 519.24.

Also, insofar as the local school district has real property in the township, the property is continually subject to the township’s zoning and land use restrictions. This means that the person, as a township zoning inspector, is required to continually monitor the local school district’s compliance with the township’s zoning and land use restrictions. It is thus likely that conflicts of interest will occur.

Finally, when a conflict of interest does arise, the person, as township zoning inspector, is unable to remove himself from the conflict. As the head of the township’s zoning enforcement department, *see* R.C. 519.16, a township zoning inspector may not abstain from overseeing or participating in all zoning enforcement matters or investigations involving the local school district insofar as the township zoning inspector is statutorily responsible for exercising all departmental decision-making authority. *See* R.C. 519.16. This means that a township zoning inspector is directly or indirectly involved in all zoning enforcement matters or investigations, and, as a result, exerts his influence in such matters or investigations. A township zoning inspector who serves as a member of the board of education of a local school district that has real property in the township thus is responsible for, and may not abstain from, overseeing or participating in zoning enforcement matters or investigations involving the local school district. Therefore, a person may not serve simultaneously as a township zoning inspector and member of the board of education of a local school district within the same county when real property of the local school district is located within the township. *See generally* 1985 Op. Att’y Gen. No. 85-

074 (if a township is governed by a county zoning plan, the positions of township trustee and county zoning inspector are incompatible).

Conflicts of Interest Between the Positions of District Administrator and Township Zoning Inspector

A review of the duties and responsibilities of the positions of township zoning inspector and district administrator for a county soil and water conservation district also reveals that a person who holds these two positions within the same county is subject to the same impermissible conflicts of interest that exist between the positions of member of the board of education of a local school district and township zoning inspector.

As stated previously, a township zoning inspector is statutorily required to enforce the township's zoning and land use restrictions. R.C. 519.16. According to the job description provided to us, the duties of the district administrator position include supervising the conservation projects of the board of supervisors of the county soil and water conservation district. These conservation projects may require the district's board of supervisors to exercise the following powers:

The supervisors of a soil and water conservation district have the following powers in addition to their other powers:

(C) To implement, construct, repair, maintain, and operate preventive and control measures and other works of improvement for natural resource conservation and development and flood prevention, and the conservation, development, utilization, and disposal of water within the district on lands owned or controlled by this state or any of its agencies and on any other lands within the district, which works may include any facilities authorized under state or federal programs, and to acquire, by purchase or gift, to hold, encumber, or dispose of, and to lease real and personal property or interests in such property for those purposes;

(D) To cooperate or enter into agreements with any occupier of lands within the district in the carrying on of natural resource conservation operations and works of improvement for flood prevention and the conservation, development, utilization, and management of natural resources within the district, subject to such conditions as the supervisors consider necessary;

...;

(I) To make agreements with the department of natural resources giving it control over lands of the district for the purpose of construction of improvements by the department under [R.C. 1501.011];

...;

(L) To enter into agreements or contracts with the department [of natural resources] for the determination, implementation, inspection, and funding of agricultural pollution abatement and urban sediment pollution abatement measures whereby landowners, operators, managers, and developers may meet

adopted state standards for a quality environment, except that failure of a district board of supervisors to negotiate an agreement or contract with the department shall authorize the division of soil and water conservation to implement the required program;

...;

(R) To enter into contracts or agreements with the chief [of the division of soil and water conservation] to implement and administer a program for urban sediment pollution abatement and to receive and expend moneys provided by the chief for that purpose[.]

R.C. 1515.08. Thus, when the board of supervisors of the soil and water conservation district exercises its powers in order to undertake a conservation project, the district administrator is the person required to manage the project for the board.

If the person, as a district administrator, is required to oversee conservation projects undertaken by the board of supervisors of the county soil and water conservation district in the township that employs him as a township zoning inspector, the person, as a township zoning inspector, would be required to determine whether the conservation projects will result in a violation of the township's zoning and land use restrictions. *See generally* 1994 Op. Att'y Gen. No. 94-098 (syllabus, paragraph one) (“[p]ursuant to R.C. Chapter 519, a board of township trustees may, for the purpose of promoting the public health, safety, and morals and in accordance with a comprehensive plan, enact zoning regulations that regulate land use in such a manner as to control the drainage of surface water from residential subdivisions, provided the regulations conform to constitutional limitations and do not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), with rules pertaining to urban sediment control that are adopted by a county under R.C. 307.79, or with other state or federal laws”); 1985 Op. Att'y Gen. No. 85-053 (syllabus) (“[p]ursuant to R.C. Chapter 519, a township may, for the purpose of promoting the public health, safety, and morals and in accordance with a comprehensive plan, enact zoning resolutions which regulate land use in such a manner as to control sediment and [storm water] runoff from urban development, so long as its resolutions do not come into direct conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), with rules pertaining to urban sediment control which are adopted by a county under R.C. 307.79, or with other laws of the state”).

In addition, the person, as a township zoning inspector, may be required to initiate or participate in a township zoning enforcement action involving a conservation project supervised by him as a district administrator for the county soil and water conservation district. *See* R.C. 519.16; R.C. 519.24. *See generally* R.C. 1515.08(G) (the board of supervisors of a county soil and water conservation district may “sue and plead in the name of the district, and be sued and impleaded in the name of the district, with respect to its contracts”). As in the situation involving the positions of member of the board of education of a local school district and township zoning inspector, conflicts of interest exist because the person, as a township zoning inspector, is subject to influences that may prevent him from making completely objective and

disinterested decisions. *See* 1985 Op. Att’y Gen. No. 85-074 at 2-292; 1981 Op. Att’y Gen. No. 81-090 at 2-343 and 2-344; *see also* 2006 Op. Att’y Gen. No. 2006-003 at 2-33; 2004 Op. Att’y Gen. No. 2004-051 at 2-449.

For the same reasons discussed above, we believe that the foregoing conflicts of interest between the positions of township zoning inspector and district administrator for a soil and water conservation district can not be eliminated entirely or sufficiently avoided when the person, as district administrator, oversees conservation projects in the township. The primary duty of a township zoning inspector is to enforce the township’s zoning and land use restrictions, R.C. 519.16, while the oversight of conservation projects is a primary function of the position of district administrator. Also, each position requires the person to exercise decision-making authority while performing the duties of the position.

In addition, the fact that the township is located within the territory of the county soil and water conservation district indicates that the person, as township zoning inspector, could be required to monitor conservation projects that are under his supervision as district administrator. It is thus likely that conflicts of interest will occur.

Moreover, as discussed earlier, when a conflict of interest does arise the person, as township zoning inspector, will be unable to remove himself from the conflict. A township zoning inspector who serves as a district administrator who oversees conservation projects in the township thus is responsible for, and may not abstain from, zoning enforcement matters or investigations concerning those conservation projects. Hence, a person may not serve simultaneously as a township zoning inspector and district administrator for a county soil and water conservation district within the same county when the person, as district administrator, oversees conservation projects in the township. *See generally* 1985 Op. Att’y Gen. No. 85-074 (the positions of township trustee and county zoning inspector are incompatible when the township is governed by the county’s zoning plan).

A Person May Not Serve Simultaneously as a Member of the Board of Education, District Administrator, and Township Zoning Inspector

Because impermissible conflicts of interest may occur when a person serves simultaneously in the positions of member of the board of education of a local school district, district administrator for a county soil and water conservation district, and township zoning inspector within the same county, it follows that a person may not hold all three of these positions at the same time when the person will be subject to these conflicts. As explained above, the conflicts occur when real property of the local school district is located within the township and the person, as district administrator, oversees conservation projects in the township and prepares the county soil and water conservation district’s budget. Therefore, we conclude, further, that a person may not serve simultaneously as a member of the board of education of a local school district, district administrator for a county soil and water conservation district, and township zoning inspector within the same county when real property of the local school district

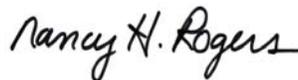
is located within the township and the person, as district administrator, oversees conservation projects in the township and prepares the county soil and water conservation district's budget.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A person may not serve simultaneously as a member of the board of education of a local school district and district administrator for a county soil and water conservation district within the same county when the person, as district administrator, prepares the county soil and water conservation district's budget.
2. A person may not serve simultaneously as a township zoning inspector and member of the board of education of a local school district within the same county when real property of the local school district is located within the township.
3. A person may not serve simultaneously as a township zoning inspector and district administrator for a county soil and water conservation district within the same county when the person, as district administrator, oversees conservation projects in the township.
4. A person may not serve simultaneously as a member of the board of education of a local school district, district administrator for a county soil and water conservation district, and township zoning inspector within the same county when real property of the local school district is located within the township and the person, as district administrator, oversees conservation projects in the township and prepares the county soil and water conservation district's budget.

Respectfully,



NANCY H. ROGERS
Attorney General