

OPINION NO. 2007-023

Syllabus:

1. The positions of mayor of a noncharter village that has not adopted an optional statutory plan of government and township fiscal officer of a township that has not adopted a limited home rule government under R.C. Chapter 504 are compatible, provided the mayor's court of the village does not hear cases in which fine and forfeited bail moneys may be paid to the township.
2. A township fiscal officer of a township that has not adopted a limited

home rule government under R.C. Chapter 504, who also serves as mayor of a noncharter village that has not adopted an optional statutory plan of government, may not participate in the preparation of the township's tax budget or explain to the county budget commission the township's tax budget or the township's need for moneys from the undivided local government fund.

3. A mayor of a noncharter village that has not adopted an optional statutory plan of government, who also serves as a township fiscal officer of a township that has not adopted a limited home rule government under R.C. Chapter 504, may not participate in any deliberations, discussions, negotiations, or votes concerning annexation or detachment proceedings involving the township; a contact between the village and township; tax exemptions that affect township tax levies; village tax levies or bond issues for additional funding when the township has placed a tax levy or bond issue on the ballot; or litigation between the village and township.
4. Conflicts of interest between the positions of mayor of a noncharter village that has not adopted an optional statutory plan of government and township fiscal officer of a township that has not adopted a limited home rule government under R.C. Chapter 504 may render the two positions incompatible if village and township officials are required to devote an inordinate amount of time and effort determining whether the person can avoid sufficiently the conflicts of interest and effectively carry out the duties of both positions.

To: James J. Mayer, Jr., Richland County Prosecuting Attorney, Mansfield, Ohio

By: Marc Dann, Attorney General, July 25, 2007

You have requested an opinion whether the positions of mayor of a non-charter village¹ that has not adopted an optional statutory plan of government² and township fiscal officer of a township that has not adopted a limited home rule

¹ Pursuant to Ohio Const. art. XVIII, § 2, the General Assembly may enact general laws to provide for the incorporation and government of municipal corporations, which are cities and villages, Ohio Const. art. XVIII, § 1; R.C. 703.01. If a village should prefer a form of government different from those statutorily authorized by the General Assembly, the village may frame and adopt a charter for its government pursuant to Ohio Const. art. XVIII, § 7, and may, subject to the provisions of Ohio Const. art. XVIII, § 3, exercise under such charter all powers of local self-government. 1954 Op. Att'y Gen. No. 4244, p. 475. General laws enacted by the General Assembly thus prescribe several forms of government for noncharter villages, while the form of government for villages that adopt a charter is established by the charter. *See* 1989 Op. Att'y Gen. No. 89-050 at 2-213 and 2-214.

² Under section two of Article XVIII of the Ohio Constitution, "there are two categories of statutory municipal governments: the form established by general

government under R.C. Chapter 504³ are compatible.⁴ The positions are compatible, provided:

laws and the optional forms of government which may be adopted by the electors of the municipality.” 1989 Op. Att’y Gen. No. 89-050 at 2-213. General laws establishing a statutory form of government for noncharter municipal corporations are found in R.C. Chapters 731 and 733, while the optional forms of statutory government are set forth in R.C. Chapter 705, *see* R.C. 705.41-.48 (commission plan); R.C. 705.51-.60 (city manager plan); and R.C. 705.71-.86 (federal plan). 1989 Op. Att’y Gen. No. 89-050 at 2-213 and 2-214.

³ A township is authorized by R.C. Chapter 504 to adopt a limited home rule form of township government under which the township exercises a greater measure of authority, in a greater number of matters, than the authority granted to townships generally by the other provisions of R.C. Title 5. *See, e.g.*, R.C. 504.04(A) (a limited home rule township may, in accordance with R.C. Chapter 504, “[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)]”). *See generally* 2002 Op. Att’y Gen. No. 2002-032 at 2-212 (“[i]n addition to the powers granted generally to townships elsewhere in the Revised Code, R.C. 504.04 empowers a limited home rule township to adopt resolutions by which the township exercises powers of local self-government or police power”).

⁴ R.C. 3513.052(A) provides, in part:

No person shall seek nomination or election to any of the following offices or positions at the same election by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, or by becoming a candidate through party nomination in a primary election, or by the filling of a vacancy under [R.C. 3513.30 or R.C. 3513.31]:

...;

(5) *Any combination of two or more municipal or township offices, positions as a member of a city, local, or exempted village board of education, or positions as a member of a governing board of an educational service center.* (Emphasis added.)

See generally Ohio Const. art. XVII, § 1 (“[e]lections for state and county officers shall be held on the first Tuesday after the first Monday in November in even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years”); R.C. 3501.02(D) (“[g]eneral elections in the state and its political subdivisions shall be held as follows: ... [f]or municipal and township officers ... in the odd-numbered years”).

1. The mayor's court of the village does not hear cases in which fine and forfeited bail moneys may be paid to the township.
2. The person, as township fiscal officer, does not participate in the preparation of the township's tax budget or explain to the county budget commission the township's tax budget or the township's need for moneys from the undivided local government fund.
3. The person, as village mayor, does not participate in any deliberations, discussions, negotiations, or votes concerning annexation or detachment proceedings involving the township; a contact between the village and township; tax exemptions that affect township tax levies; village tax levies or bond issues for additional funding when the township has placed a tax levy or bond issue on the ballot; or litigation between the village and township.
4. Village and township officials are not required to devote an inordinate amount of time and effort determining whether the person can avoid sufficiently the conflicts of interest and effectively carry out the duties of both positions.

Compatibility Test

The following seven-question test is used to determine whether two public positions are compatible:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Does a constitutional provision or 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?

R.C. 3513.052 thus prohibits a person from being a candidate for the office of township fiscal officer and village mayor at the same election. *See generally* R.C. 507.01 (election of township fiscal officer); R.C. 733.24 (election of village mayor). However, if the elections for the two offices are not held in the same year, then R.C. 3513.052's prohibition does not apply.

2006 Op. Att’y Gen. No. 2006-047 at 2-447. *See generally* 2 Ohio Admin. Code 123:1-46-02(F) (“[s]ervice in an appointed or elected position is prohibited when such position is subordinate to or in any way a check upon a position concurrently occupied by a classified or unclassified employee, or when it is physically impossible for one person to discharge the duties of both positions, or if some specific constitutional or statutory bar exists prohibiting a person from serving [in] both positions”).

Questions six and seven ask whether a charter provision, resolution, or ordinance, or federal, state, or local departmental regulation prohibits a person from holding two particular public positions simultaneously. No charter provision or state or federal regulation prohibits a person from serving simultaneously as a non-charter village mayor and township fiscal officer. Additionally, whether an applicable local resolution, ordinance, or departmental regulation prohibits a person from serving simultaneously in these two positions is a question for local officials to answer. It is assumed, for the purpose of this opinion, that no such local resolution, ordinance, or departmental regulation exists.

Discussion of R.C. 124.57

Question one asks whether either of the positions is a classified employment within the terms of R.C. 124.57, which provides, in pertinent part:

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

As explained in 2001 Op. Att’y Gen. No. 2001-034 at 2-203, R.C. 124.57 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 prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service. *See* rule 123:1-46-02(C).

We must now determine whether a village mayor or township fiscal officer is a position that is subject to the prohibition set forth in R.C. 124.57. As stated above, R.C. 124.57 regulates the partisan political activities of officers and employees of “the state, the several counties, cities, and city school districts of the state, [and] the civil service townships of the state.” It does not apply to mayors or other officers of villages. 2004 Op. Att’y Gen. No. 2004-025 at 2-222; 2002 Op. Att’y Gen. No. 2002-021 at 2-133.

A township fiscal officer is in the unclassified service because, *inter alia*, it is an elected position. See R.C. 124.11(A)(1); R.C. 507.01. See generally also 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,⁵ 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, see R.C. 124.40(B), R.C. 124.57 does not apply to a township trustee in the service of a civil service township). R.C. 124.57 thus does not prohibit a township fiscal officer from engaging in partisan political activity. Accordingly, the prohibition of R.C. 124.57 does not apply to the positions of village mayor and township fiscal officer, and so does not bar a person from holding both of these positions at the same time.

Constitutional Provisions and Statutes Prohibiting the Holding of Another Public Position

Question two asks whether a constitutional provision or the empowering statutes of either position limit employment in another public position or the holding of another public office. No constitutional provision or statute prohibits a person from serving simultaneously as a village mayor and township fiscal officer.⁶ Question two, therefore, may be answered in the negative.

Subordination and Control

Question three asks whether one position is subordinate to, or in any way a

⁵ For purposes of R.C. Chapter 124, “[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 that has a population of ten thousand or more persons residing within the township and outside any municipal corporation and that has a police or fire department of ten or more full-time paid employees may appoint three persons to constitute the township civil service commission”).

⁶ A village mayor is the president of the village’s legislative authority, and, in this capacity, the mayor presides over the meetings of the legislative authority and may vote on a matter before the legislative authority when there is a tie. R.C. 733.24. Under R.C. 731.12, a member of a village’s legislative authority is prohibited from holding “any other public office.” Prior opinions of the Attorneys General have determined, however, that duties imposed upon a village mayor by R.C. 733.24 do not make the mayor a member of the village’s legislative authority who is subject to R.C. 731.12’s prohibition. 1998 Op. Att’y Gen. No. 98-017 at 2-85 n.1; 1913 Op. Att’y Gen. No. 465, vol. II, p. 1372. See generally 1953 Op. Att’y Gen. No. 2367, p. 69, at 70-71 (“[c]ertainly it could not be asserted that the mayor of a village is a member of the council merely by virtue of his power to vote in case of a tie”); 1946 Op. Att’y Gen. No. 744, p. 68 (the president of city council is not a member of the council, and is not prohibited by G.C. 4207 (now R.C. 731.02) from holding another public office).

check upon, the other. A township fiscal officer, as an elected officer, R.C. 507.01, serves and is responsible to the township's electorate. A village mayor is elected by, and responsible to, the citizens of the village. R.C. 733.24. The positions thus serve different constituencies and are not subordinate to each other. The positions also 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

Question four asks whether it is physically possible for one person to perform the duties of both public positions. This is a factual question that is best resolved by village and township officials since they may more precisely determine the time constraints and demands imposed upon the person as a village mayor and township fiscal officer. *See* 2006 Op. Att'y Gen. No. 2006-047 at 2-450 and 2-451.

It should be noted, however, that both a township fiscal officer and village mayor, as elected officers, are required to perform duties imposed by statute and, where the nature of such duties requires that the fiscal officer or mayor be present at a particular time or place, or act in a particular manner, the fiscal officer or mayor must be able to do so. *See, e.g.*, R.C. 731.46 (“[t]he legislative authority of a municipal corporation shall not be required to hold more than one regular meeting in each week. The meetings may be held at such time and place as is prescribed by ordinance”); R.C. 733.24 (the village mayor “shall be the president of the legislative authority and shall preside at all regular and special meetings thereof”); R.C. 507.04 (requiring the township fiscal officer to keep an accurate record of the proceedings of the board of township trustees at all its meetings). Thus, in order to serve simultaneously in these two positions, a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner. This means that there may not be a direct conflict between the times when the person is needed to carry out the responsibilities of each of these positions.

Conflicts of Interest

The fifth and final question 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 at the same time if the “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.” 1980 Op. Att'y Gen. No. 80-035 at 2-149.

⁷ R.C. 102.08 authorizes the Ohio Ethics Commission to issue advisory opinions regarding the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. In light of this grant of authority, we will refrain from interpreting and applying these provisions by way of a formal opinion of the Attorney General. 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three). We recommend, however, that you contact the Ohio Ethics Commission for guidance concerning the application of these provisions in the situation in which a person serves simultaneously as a village mayor and township fiscal officer.

We must now review the powers, duties, and responsibilities of a village mayor and township fiscal officer so as to determine whether there are any conflicts of interest between these two positions. If our review discloses conflicts, we must then determine whether the conflicts may be avoided or eliminated entirely, thus allowing the person to hold both positions at the same time. The factors used in making this determination include, but are not limited to, the probability of the conflicts occurring, the ability of the person to remove himself from any conflicts that may occur, whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters. 2006 Op. Att'y Gen. No. 2006-047 at 2-451.

Let us first review the general duties and responsibilities of the position of township fiscal officer. The general responsibilities of a township fiscal officer include recording the proceedings of the board of township trustees, R.C. 507.04, notifying the board of elections of vacancies in township offices and of township boundary changes, R.C. 507.051, administering oaths and certifying affidavits, R.C. 507.06, and recording bonds, R.C. 507.08. A township fiscal officer also handles various financial matters for the township. *See, e.g.*, R.C. 133.19(A) (certifies to the board of township trustees the estimate of the maximum maturity of bonds for permanent improvements and that all permanent improvements have an estimated life or period of usefulness of at least five years); R.C. 133.27(A)(4) (signs R.C. Chapter 133 securities issued on behalf of the board of township trustees); R.C. 507.04 (keeps a record of all the accounts and transactions of the board of township trustees); R.C. 507.07 (prepares an annual statement of township receipts and expenditures); R.C. 507.11(B) (countersigns all orders for payment of township moneys); R.C. 5705.03 (receives the proceeds of any township tax levy from the county); R.C. 5705.41 (certifies that the amount of money required to be paid by the township under a contract or order has been lawfully appropriated and is in the treasury or in the process of collection).

We will now turn to the powers, duties, and responsibilities of a village mayor. A village mayor is vested with the executive power of the village. R.C. 733.23. The mayor is the chief conservator of the peace within the village, R.C. 733.24; R.C. 733.30; R.C. 737.18; R.C. 1905.20, and serves as the president of the village's legislative authority, R.C. 733.24. The general duties of a village mayor are set forth in R.C. 733.30, which provides:

The [mayor] shall perform all the duties prescribed by the bylaws and ordinances of the municipal corporation. He shall see that all ordinances, bylaws, and resolutions of the legislative authority are faithfully obeyed and enforced. He shall sign all commissions, licenses, and permits granted by such legislative authority, or authorized by [R.C. Title 7], and such other instruments as by law or ordinances require his certificate.

In addition, a village mayor has "general supervision over each department and the officers provided for in [R.C. Title 7]." R.C. 733.35; *see* R.C. 733.34. A village mayor also assists the legislative authority in handling the village's finances and preparing the village's tax budget. *See* R.C. 733.32; R.C. 733.33; R.C.

5705.28(C)(1). *See generally* R.C. 731.47 (“[t]he legislative authority shall have the management and control of the finances and property of the municipal corporation, except as otherwise provided”).

Our review of the powers, duties, and responsibilities of the respective positions discloses that a person who serves simultaneously in these two positions may be subject to divided loyalties or exposed to influences that may prevent his decisions from being completely objective and disinterested. Under R.C. 733.24, the village mayor is the president of the village’s legislative authority and is authorized to vote on a matter before the village’s legislative authority when there is a tie. As the president of the village’s legislative authority, a village mayor be required to vote on a contract between the village and township. *See, e.g.*, R.C. 9.60 (authorizing a village and township to enter into a contract whereby the village or township provides fire protection to the other); R.C. 505.43 and R.C. 505.50 (a township may enter into a contract with a village in order to obtain police protection or to obtain additional police protection); R.C. 701.07 (authorizing a municipal corporation and a township to enter into a cooperative economic development agreement); R.C. 709.192 (authorizing a municipal corporation and township to enter into an annexation agreement); R.C. 737.04 (a village may enter into a contract with a township in order to obtain police protection or to obtain additional police protection). If a village mayor who serves as a township fiscal officer were required to deliberate, discuss, negotiate, or vote on a contract between the village and township, it might be difficult for the mayor to perform his duties and exercise his discretion in a completely objective, disinterested manner because of his position with the township.

In addition, a village mayor in his capacity as president of the village’s legislative authority may be required to vote on a legal matter involving both the village and township. The village and township are bodies corporate and politic which may sue and be sued. *See* R.C. 503.01; R.C. 715.01. As a result, a village and township may become involved in legal actions or proceedings against each other. In such a situation, a village mayor who serves as a township fiscal officer may be required to participate in deliberations, discussions, negotiations, or votes concerning litigation involving the village and township, and, as such, may be subject to divided loyalties. *See* 2006 Op. Att’y Gen. No. 2006-003 at 2-32 and 2-33.

Also, a village mayor, as the president of the village’s legislative authority, may be required to vote on annexation or detachment proceedings involving the township,⁸ *see, e.g.*, R.C. 709.14; R.C. 709.38; R.C. 709.50, or tax exemptions with respect to improvements to real property that affect the township, *see, e.g.*, R.C. 725.02; R.C. 3735.67; R.C. 5709.40; R.C. 5709.41; R.C. 5709.62. A conflict of interest may exist in such situations because the person’s vote as mayor may affect the person’s compensation as a township fiscal officer. *See* 2003 Op. Att’y Gen. No.

⁸ R.C. 709.01 provides, in part, that “[t]erritory may be annexed to, merged with, or detached from, municipal corporations, in the manner provided in [R.C. Chapter 709].”

2003-006 at 2-38 and 2-39. Under R.C. 507.09(A), township fiscal officers are compensated as follows:

(A) Except as otherwise provided in division (D) of this section,⁹ the township fiscal officer shall be entitled to compensation as follows:

(1) In townships having a budget of fifty thousand dollars or less, three thousand five hundred dollars;

(2) In townships having a budget of more than fifty thousand but not more than one hundred thousand dollars, five thousand five hundred dollars;

(3) In townships having a budget of more than one hundred thousand but not more than two hundred fifty thousand dollars, seven thousand seven hundred dollars;

(4) In townships having a budget of more than two hundred fifty thousand but not more than five hundred thousand dollars, nine thousand nine hundred dollars;

(5) In townships having a budget of more than five hundred thousand but not more than seven hundred fifty thousand dollars, eleven thousand dollars;

(6) In townships having a budget of more than seven hundred fifty thousand but not more than one million five hundred thousand dollars, thirteen thousand two hundred dollars;

(7) In townships having a budget of more than one million five hundred thousand but not more than three million five hundred thousand dollars, fifteen thousand four hundred dollars;

(8) In townships having a budget of more than three million five hundred thousand dollars but not more than six million dollars, sixteen thousand five hundred dollars;

(9) In townships having a budget of more than six million dollars, seventeen thousand six hundred dollars. (Footnote added.)

The compensation of a township fiscal officer thus is directly related to the size of the township's budget. *See* R.C. 507.09(A). The size of a township's budget is based, in part, on the amount of taxable property in the township and tax exemptions granted to real property owners. *See* R.C. 5705.02; R.C. 5705.03; R.C. 5709.01. Accordingly, when a township gains or loses territory in annexation or detachment proceedings or township property owners are granted tax exemptions, the amount of money that is to be paid to the township is either increased or decreased. In such a situation, the township's budget is correspondingly increased

⁹ R.C. 507.09(D) establishes the compensation of a township fiscal officer in the calendar year 1999 and thereafter.

or decreased. *See generally* 1999 Op. Att’y Gen. No. 99-015 (syllabus, paragraph one) (for purposes of calculating the authorized compensation of the township clerk (now township fiscal officer), “the term ‘budget’ refers to the total amount of resources available to the township pursuant to the official certificate of estimated resources¹⁰ or amendments to the certificate” (footnote added)). Such a change in the township’s budget could ultimately increase or decrease the township fiscal officer’s compensation. If a village mayor who serves as a township fiscal officer were required to deliberate, discuss, negotiate, or vote on an annexation or detachment proceeding involving the township or the granting of a tax exemption to township real property owners,¹¹ it might be difficult for the mayor to perform his duties and exercise his discretion in a completely objective and disinterested manner because of his position as township fiscal officer. *See* 2003 Op. Att’y Gen. No. 2003-006 at 2-39; 1998 Op. Att’y Gen. No. 98-017 at 2-87.

We believe, however, that the foregoing potential conflicts of interest can be sufficiently avoided. No provision of law requires a village and township to enter into a contract with each other or mandates that a village regularly consider granting tax exemptions or conduct annexation or detachment proceedings. Moreover, the mayor of the village votes on such matters only in the case of a tie. Thus, the occasions in which a village mayor who is a township fiscal officer will have to deliberate, discuss, negotiate, and vote on annexation or detachment proceedings involving the township, a contact between the village and township, tax exemptions that affect township tax levies, and litigation between the village and township will be infrequent, and, as such, are not the primary duties of a village mayor.

Finally, even when such matters come before the village’s legislative authority, a village mayor is able to remove himself from any deliberations, discussions, negotiations, or votes on the matters. *See generally State ex rel. Saxon v.*

¹⁰ The certificate of estimated resources “sets forth on the credit side of each fund the estimated unencumbered balances and receipts, and, if a tax is levied for the fund, the estimated revenue to be derived from the levy, the rate, and the portion within the ten-mill limitation.” 1999 Op. Att’y Gen. No. 99-015 at 2-116.

¹¹ A tax exemption granted by a village may apply to real property located within the village that is subject to taxation by a township. *See generally* R.C. 725.02(A) (“[t]he portion of the assessed valuation of improvements constructed pursuant to a development agreement, and the portion of the increase in the assessed valuation after the commencement of rehabilitation of improvements rehabilitated pursuant to a development agreement declared to be a public purpose in the development agreement shall be exempt from real property taxation by all political subdivisions and taxing districts”); 1990 Op. Att’y Gen. No. 90-048 (syllabus, paragraph one) (“[w]hen a portion of the territory of a township is included within a municipal corporation and no steps are taken to modify township boundaries, electors who reside in that portion of the township are residents of both the township and the municipal corporation. Unless a statute provides a specific exclusion, such residents are entitled to vote on both municipal and township officers, issues, and tax levies, and are subject to taxation by both the municipal corporation and the township”).

Kienzle, 4 Ohio St. 2d 47, 48, 212 N.E.2d 604 (1965) (“[i]n the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur”). Such abstention allows the mayor to adhere to the basic principle that a public official not participate in a matter in which his objectivity might be impaired. *See* 2000 Op. Att’y Gen. No. 2000-025 at 2-170. Accordingly, the foregoing potential conflicts of interest do not prohibit a village mayor from serving simultaneously as a township fiscal officer, provided he does not participate in any deliberations, discussions, negotiations, or votes concerning annexation or detachment proceedings involving the township, a contact between the village and township, tax exemptions that affect township tax levies, or litigation between the village and township.

A potential conflict of interest may also arise when the village and township enter into a contract with each other. If the contract requires the township to pay the village for a service, the township fiscal officer would be required to certify that the amount of money payable under the contract has been lawfully appropriated and is in the treasury or in the process of collection, R.C. 5705.41, and to disburse township moneys payable to the village under the contract, *see* R.C. 507.04; R.C. 507.11(B). In such a situation, the township fiscal officer’s responsibilities as village mayor could improperly influence the performance of his duties as township fiscal officer, thereby subjecting him to a conflict of interest. 2003 Op. Att’y Gen. No. 2003-006 at 2-39.

Although it is possible for this conflict of interest to occur, prior opinions of the Attorney General have advised that this conflict of interest is insufficient to summarily render two public positions incompatible. 2003 Op. Att’y Gen. No. 2003-006 at 2-39; 2002 Op. Att’y Gen. No. 2002-021 at 2-138; 1999 Op. Att’y Gen. No. 99-018 at 2-133. These opinions have stated that, when a township fiscal officer certifies the availability of money payable under a public contract or disburses township moneys payable under a public contract, the township fiscal officer performs a ministerial duty. 2003 Op. Att’y Gen. No. 2003-006 at 2-39 and 2-40; 2002 Op. Att’y Gen. No. 2002-021 at 2-138; 1999 Op. Att’y Gen. No. 99-018 at 2-133. In other words, a township fiscal officer performs a duty that “involves obedience to instructions or laws instead of discretion, judgment, or skill.” *Black’s Law Dictionary* 1017 (8th ed. 2004) (defining “ministerial”); *accord* 2002 Op. Att’y Gen. No. 2002-021 at 2-138. Accordingly, when a township fiscal officer certifies the availability of money payable under a contract between a township and village or disburses township moneys payable to the village under a contract, the township fiscal officer exercises no decision-making authority.

Moreover, there is a presumption that, in the absence of evidence to the contrary, a township fiscal officer will perform his ministerial duties in a regular and lawful manner. 2003 Op. Att’y Gen. No. 2003-006 at 2-40; 2002 Op. Att’y Gen. No. 2002-021 at 2-139; *see 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”). Hence, when a township and village enter into a contract that requires the township to pay the village for a service, in the absence of evidence to the contrary, it is to be presumed that the township fiscal officer will discharge his ministerial duties of certifying the availability of money payable under the contract and disbursing township moneys payable to the village under the contract in a regular and lawful manner.

There is another potential conflict of interest that may arise when a village and township enter into a contract with each other. R.C. 731.14 requires a contract entered into between a village and township to be “executed in the name of the village and signed on its behalf by the mayor and clerk.” When a village has established the position of village administrator pursuant to R.C. 735.271, the contract is signed by the village administrator instead of the mayor. R.C. 731.141; see R.C. 731.14 (R.C. 731.14 “does not apply to those villages that have provided for the appointment of a village administrator under [R.C. 735.271]”).

In either situation, a village mayor’s responsibilities as township fiscal officer could subject him to divided loyalties when a contract between the village and township is to be signed. For example, if the mayor is aware that the village legislative authority did not comply with legal requirements when entering into a contract with the township, the mayor may nevertheless sign the contract or direct the village administrator to sign the contract. See generally *State ex rel. Ciraci v. Kehres*, 29 Ohio C.C. (n.s.) 458, 35 Ohio Cir. Dec. 596 (Cuyahoga County 1918) (a village mayor is not required to sign a contract entered into by the village’s legislative authority when the legislative authority did not comply with statutory dictates). See generally also R.C. 735.271 (the village administrator serves at the pleasure of the village mayor and legislative authority); R.C. 735.273 (“[t]he village administrator shall be under the general supervision and control of the mayor”).

For the several reasons discussed above, this conflict of interest does not render the positions of village mayor and township fiscal officer incompatible. A township and village are not required to enter into any contracts with each other. Also, the signing of contracts entered into between a village and township is not a duty that a village mayor is required to regularly perform. Thus, the occasions in which a village mayor who is a township fiscal officer will have to sign a contract entered into between the village and township will be rare.

Moreover, “if a contract is signed by the mayor or his representative, unless it is awarded by [the municipal corporation’s legislative authority], it is not binding” and may not be enforced. *Coyne v. Salvatore*, 2002-Ohio-5819, 2002 Ohio App. LEXIS 5671, at ¶54 n.3 (Cuyahoga County Oct. 24, 2002); accord *State ex rel. Ciraci v. Kehres*, 29 Ohio C.C. (n.s.) 458, 461, 35 Ohio Cir. Dec. 596. The signature of a village mayor or village administrator thus does not render enforceable an otherwise unenforceable contract entered into between a village and township. In other words, the signature of the mayor or administrator has no force or effect when a contract has been entered into unlawfully.

Finally, there is a presumption that, in the absence of evidence to the contrary, village mayors and other village officers will perform their duties in a regular

and lawful manner. *See State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (syllabus, paragraph ten). Thus, when a township and village enter into a contract, in the absence of evidence to the contrary, it is to be presumed that a village mayor will sign the contract in a regular and lawful manner and that the mayor will not use his influence to compel the village administrator to sign a contract that was unlawfully entered into by the village's legislative authority.

Potential conflicts of interest also exist because of competition over tax moneys generated within the ten-mill limitation.¹² Except as provided in R.C. 5705.28(B) or R.C. 5705.281,¹³ the taxing authorities of villages and townships are required to prepare, adopt, and submit an annual tax budget to the county budget commission. R.C. 5705.28(A); *see also* R.C. 5705.29-.32. *See generally* R.C. 5705.01(A) (defining both a village and township as a "subdivision" for purposes of R.C. Chapter 5705 (tax levy law)). As used in R.C. Chapter 5705, "taxing authority" means the legislative authority of a village in the case of a village, and the board of township trustees in the case of a township. R.C. 5705.01(C).

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 village and township tax budgets and adjusts the levies of villages and townships within the limits of the law. R.C. 5705.31; R.C. 5705.32. Because revisions and adjustments made by the county budget commission directly affect the amount of tax money generated within the ten-mill limitation that will be allotted to villages and townships, both villages and townships are permitted to have representatives appear before the county budget commission to explain their financial needs. R.C. 5705.32(E).

In addition, a potential conflict of interest exists because of the competition between a village and township for moneys in the undivided local government fund. R.C. 5747.50-.55 set forth provisions governing the creation and operation of the undivided local government fund. Because both a village and township are included within the definition of "subdivision," for purposes of R.C. 5747.50-.55, *see* R.C.

¹² Ohio Const. art. XII, § 2 provides that no property may be taxed in excess of one percent of its true value in money for all state and local purposes, except when approved by the voters or provided for by charter of a municipal corporation. 1999 Op. Att'y Gen. No. 99-015 at 2-115 n.2. This is known as the "ten-mill limitation." 2001 Op. Att'y Gen. No. 2001-019 at 2-107 n.1; *see* R.C. 5705.02; R.C. 5705.03; R.C. 5705.07. R.C. 5705.03(A) authorizes the taxing authority of a subdivision to levy within the ten-mill limitation property taxes for the purpose of paying the current operating expenses of the subdivision. 2001 Op. Att'y Gen. No. 2001-019 at 2-107.

¹³ 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 adopt a tax budget pursuant to R.C. 5705.28(A).

5747.01(Q)(1), each may be apportioned moneys from the undivided local government fund.

R.C. 5747.51, R.C. 5747.52, and R.C. 5747.53 set forth the method by which the moneys in the undivided local government fund are to be allocated to subdivisions. Pursuant to R.C. 5747.51(B), both villages and townships are given the opportunity to have representatives appear before the county budget commission to explain and establish their need for moneys from the undivided local government fund.

A person who serves as a village mayor is required to participate in the preparation of the village's annual tax budget. R.C. 5705.28(C); 1987 Op. Att'y Gen. 87-013 at 2-82 and 2-83; 1982 Op. Att'y Gen. No. 82-042 at 2-119. The person also may have to explain to the county budget commission the village's annual tax budget or the village's need for moneys from the undivided local government fund. *See* R.C. 5705.32(E); R.C. 5747.51(B).

A person who serves as a township fiscal officer may be required to assist in preparing the township's annual tax budget and in explaining it to the county budget commission. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35. In addition, the person may be asked by the board of township trustees to explain to the county budget commission the township's need for moneys from the undivided local government fund. *See* R.C. 5705.32(E); R.C. 5747.51(B); 2003 Op. Att'y Gen. No. 2003-006 at 2-35.

Accordingly, if a person who serves as a village mayor and township fiscal officer were to assist in the preparation of both the village's and township's annual tax budget or participate in the presentation of those budgets to the county budget commission, that person might be subject to influences that could prevent him from making completely objective and disinterested decisions. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35. Similarly, if the person were required to explain to the county budget commission both the village's and township's need for moneys from the undivided local government fund, the person might be subject to influences that could prevent him from making completely objective, disinterested decisions. *See id.*

We believe, however, that the foregoing tax and budgetary conflicts of interest can be sufficiently avoided. A township fiscal officer is not required by statute to prepare the township's tax budget or present the township's budget to the county budget commission. *Id.* Instead, R.C. 5705.28 requires the taxing authority of the township to adopt an annual tax budget. As used in R.C. Chapter 5705, "taxing authority" means the board of township trustees in the case of a township. R.C. 5705.01(C). Thus, a township fiscal officer is not subject to conflicts of interest involving the township's budget or obtaining moneys from the county budget commission. *See id.*

In addition, the fact that a village mayor holds an additional employment with a political subdivision that competes with the village for tax moneys generated within the ten-mill limitation and moneys from the undivided local government

fund is, in and of itself, an insufficient reason to find that the mayor is subject to an impermissible conflict of interest. *See id.* If this reason were deemed sufficient, a village mayor would not be permitted to hold any employment or office with a political subdivision that competes with the village for tax moneys generated within the ten-mill limitation and moneys from the undivided local government fund. *See id.*

Moreover, while the village and township each prepare and submit a tentative tax budget and request moneys from the undivided local government fund, it is the county budget commission that actually allocates to the village and township tax proceeds within the ten-mill limitation and moneys from the undivided local government fund. *See, e.g.,* R.C. 5705.31-.32; R.C. 5747.51; R.C. 5747.52; R.C. 5747.53. Accordingly, the potential conflicts of interest arising because of the competition over tax moneys generated within the ten-mill limitation and the competition between a village and township for moneys in the undivided local government fund are, as a general matter, avoided. *See* 2003 Op. Att’y Gen. No. 2003-006 at 2-36.

However, such conflicts are not avoided when the person, as township fiscal officer, is required by the board of township trustees to prepare and present the township’s annual tax budget to the county budget commission or to explain to the county budget commission the township’s need for moneys from the undivided local government fund. *See id.* An impermissible “conflict of interest exists where one person, who owes a duty of loyalty to each of two different governmental entities, is required to advocate a position on behalf of one entity to the potential detriment of the other.” 1999 Op. Att’y Gen. No. 99-018 at 2-131.

A person who serves simultaneously as a village mayor and township fiscal officer could not avoid the aforementioned conflicts if the board of township trustees requires the person, as township fiscal officer, to prepare and present the township’s annual tax budget to the county budget commission or to explain to the county budget commission the township’s need for moneys from the undivided local government fund. *See* 2003 Op. Att’y Gen. No. 2003-006 at 2-36. *See generally* 1992 Op. Att’y Gen. No. 92-053 at 2-218 (“a township clerk [now township fiscal officer] cannot avoid appearing before the county budget commission if the township trustees require him to defend the township tax budget”). A person who simultaneously holds the positions of village mayor and township fiscal officer thus is subject to an impermissible conflict of interest when he is required to participate in the preparation of the township’s annual tax budget or explain to the county budget commission the township’s annual tax budget or the township’s need for moneys from the undivided local government fund. *See* 2003 Op. Att’y Gen. No. 2003-006 at 2-36. Therefore, conflicts of interest arising because of the competition over tax moneys generated within the ten-mill limitation and the competition between a village and township for moneys in the undivided local government fund do not exist and do not render the positions of village mayor and township fiscal officer incompatible, unless the person, as township fiscal officer, is required to participate in the preparation of the township’s annual tax budget or explain to the county budget commission the township’s annual tax budget or the township’s need for moneys from the undivided local government fund. *See id.*

An additional budgetary conflict may also exist because of competition for additional moneys in excess of the ten-mill limitation. As taxing authorities for partially coextensive subdivisions, *see* R.C. 133.01(NN)(2), (7); R.C. 5705.01(C), the village legislative authority and board of township trustees are permitted to place levies on the ballot for taxes in excess of the ten-mill limitation, R.C. 5705.07; *see, e.g.*, R.C. 5705.19, and to submit to the electors bond issues, *see* R.C. 133.18. Where both the village and township contemplate asking the voters for a tax levy or bond issue for additional funding, a person who serves simultaneously as a village mayor and township fiscal officer might find himself subject to divided loyalties and influences that may prevent his decisions, as village mayor, from being completely objective and disinterested. *See* 2006 Op. Att’y Gen. No. 2006-003 at 2-27. For example, if the township has authorized a tax levy for additional operating funds, *see* R.C. 5705.07; R.C. 5705.19, the person as a village mayor might be apprehensive about advocating or voting¹⁴ in favor of placing a village levy on the ballot for fear that the township levy may be rejected in favor of the village levy. *See* 2006 Op. Att’y Gen. No. 2006-003 at 2-27. “Questions of competing concerns before the electorate may be critical to determining whether or when a board might consider bringing requests for additional taxes before the voters.” 1988 Op. Att’y Gen. No. 88-011 at 2-43.

Moreover, as explained above, the compensation of a township fiscal officer is directly related to the size of the township’s budget. The size of a township’s budget is based, in part, on tax moneys generated in excess of the ten-mill limitation. *See generally* 1999 Op. Att’y Gen. No. 99-015 (syllabus, paragraph two) (“[s]pecial levies of a township are included in the official certificate of estimated resources or amendments to the certificate, and thus in the township budget”). Accordingly, the passage or failure of a township levy for taxes in excess of the ten-mill limitation could ultimately increase or decrease the township fiscal officer’s compensation. If a village mayor who serves as a township fiscal officer were required to deliberate, discuss, negotiate, or vote on placing a village tax levy or bond issue for additional funding on the ballot when the township has placed a tax levy or bond issue on the ballot, it might be difficult for the mayor to perform his duties and exercise his discretion in a completely objective and disinterested manner because of his position as township fiscal officer. *See* 2003 Op. Att’y Gen. No. 2003-006 at 2-39.

We believe, however, that this conflict of interest is also insufficient to render the positions of township fiscal officer and village mayor incompatible. It is unlikely that both the village and township will have a tax levy or bond issue on the same ballot every election. Thus, deliberations, discussions, or votes by the legislative authority of the village concerning the placement of a tax levy or bond issue for additional funding on the ballot when the township has previously placed such a levy or bond issue on the ballot will be infrequent.

In addition, when the village considers placing a levy on the ballot for taxes in excess of the ten-mill limitation or submitting to the electors a bond issue, the

¹⁴ Pursuant to R.C. 733.24, a village mayor, as the president of the village’s legislative authority, may vote when there is a tie.

person as a village mayor is not required to vote on the matter unless there is a tie. The mayor also may remove himself from any deliberations, discussions, or votes on the tax levy or bond issue. *See* 2004 Op. Att’y Gen. No. 2004-025 at 2-228. *See generally State ex rel. Gretick v. Jeffrey*, 12 Ohio St. 3d 55, 56, 465 N.E.2d 412 (1984) (a county commissioner who is a principal at a high school may refrain from voting on a matter involving school property assessments and avoid a conflict of interest). It is well established that, in a matter in which a public officer is exposed to influences that may prevent him from making completely objective and disinterested decisions, the officer should refrain from participating in the matter. 2004 Op. Att’y Gen. No. 2004-025 at 2-228.

Moreover, the fact that a village mayor holds an additional employment with a township that competes with the village for tax moneys generated in excess of the ten-mill limitation is, in and of itself, an insufficient reason to find that the mayor is subject to impermissible conflicts of interest. *See* 2006 Op. Att’y Gen. No. 2006-003 at 2-28; *see also State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d 96, 99, 206 N.E.2d 563 (1965). If this reason were deemed sufficient, a person would not be permitted to hold a public position with two different political subdivisions that compete with each other for tax moneys generated in excess of the ten-mill limitation. *See* 2006 Op. Att’y Gen. No. 2006-003 at 2-28. Thus, a village mayor who serves as a township fiscal officer should abstain from participating in deliberations, discussions, and votes on a village tax levy or bond issue for additional funding when the township has already placed a tax levy or bond issue on the ballot. *See id.*

A final conflict of interest exists because a village may establish and maintain a mayor’s court under R.C. 1905.01. When a village establishes a mayor’s court, the mayor or a magistrate appointed by the mayor, *see* R.C. 1905.05, may hear and determine prosecutions and criminal causes that are within the jurisdiction of the mayor’s court, as set forth in R.C. 1905.01. A portion of the fines and forfeited bail money collected by mayors and magistrates in connection with prosecutions and criminal causes heard by them may be paid to townships. *See generally* R.C. 4511.19(G)(5)(a) (“[f]ines imposed under this section for a violation of division (A) of this section shall be distributed as follows ... [t]wenty-five dollars of the fine imposed under division (G)(1)(a)(iii), thirty-five dollars of the fine imposed under division (G)(1)(b)(iii), one hundred twenty-three dollars of the fine imposed under division (G)(1)(c)(iii), and two hundred ten dollars of the fine imposed under division (G)(1)(d)(iii) or (e)(iii) of this section shall be paid to an enforcement and education fund established by the legislative authority of the law enforcement agency in this state that primarily was responsible for the arrest of the offender, as determined by the court that imposes the fine”); R.C. 4511.19(G)(5)(b) (“[f]ines imposed under this section for a violation of division (A) of this section shall be distributed as follows ... [f]ifty dollars of the fine imposed under division (G)(1)(a)(iii) of this section shall be paid to the political subdivision that pays the cost of housing the offender during the offender’s term of incarceration”); R.C. 4513.35(A) (“[a]ll fines collected under [R.C. 4511.01-.78, R.C. 4511.99, and R.C. 4513.01-.37] shall be paid into the county treasury and, with the exception of that

portion distributed under [R.C. 3375.53], shall be placed to the credit of the fund for the maintenance and repair of the highways within that county, except that: ... Subject to [R.C. 4513.263(E)] and except as otherwise provided in division (A)(3)(b) of this section, one-half of all fines collected from, and one-half of all moneys arising from bonds forfeited by, persons apprehended or arrested by a township constable or other township police officer shall be paid to the township treasury to be placed to the credit of the general fund”).

If a village mayor who serves as a township fiscal officer were required to operate a mayor’s court, there might be situations in which it might be difficult for the mayor to perform his duties and exercise his discretion in a completely objective and disinterested manner because of his position as township fiscal officer. For instance, the mayor may be biased to find a person guilty or increase a person’s fine or bail when a portion of the fine or forfeited bail is paid to the township. Also, the mayor may direct a magistrate of the mayor’s court to find a person guilty or increase a person’s fine or bail when a portion of the fine or forfeited bail is paid to the township. *See generally* R.C. 1905.05(A) (“[a] mayor of a municipal corporation that has a mayor’s court may appoint a person as mayor’s court magistrate to hear and determine prosecutions and criminal causes in the mayor’s court that are within the jurisdiction of the mayor’s court, as set forth in [R.C. 1905.01]”); 1992 Op. Att’y Gen. No. 92-017 at 2-60 (“the law generally recognizes that, absent constitutional or statutory provisions specifying otherwise, the power to remove an appointee from a public office or position is implied by the power to make such appointment”). Accordingly, if a mayor’s court presides over cases in which fine and forfeited bail moneys may be paid to the township, a village mayor who serves as a township fiscal officer is subject to an impermissible conflict of interest to the extent that he has inconsistent duties as village mayor and township fiscal officer. *See generally Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972) (a defendant who is convicted of two traffic offenses in the mayor’s court is deprived of a neutral and detached magistrate, and therefore due process, because “possible temptation” may exist not only when the mayor has direct personal pecuniary interest but also when “the mayor’s executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor’s court”); *Depiero v. City of Macedonia*, 180 F.3d 770, 778 (6th Cir. 1999) (“the mayor’s interest in and his responsibility for the financial condition of the village gave him a strong ‘official motive to convict and graduate the fine to help the financial needs of the village’” (quoting *Tumey v. Ohio*, 273 U.S. 510, 535 (1927))); *Village of Covington v. Lyle*, 69 Ohio St. 2d 659, 660, 433 N.E.2d 597 (1982) (“due process analysis requires that we examine the interaction of whatever financial interest the mayor may have in a particular case with the nature and extent of his executive powers”); Ohio May. R. 11(D) (“[m]ayor’s court personnel shall treat all persons appearing before the mayor’s court in a fair and impartial manner”).

We are aware that a village mayor who serves as a township fiscal officer may not avoid the conflict if the mayor’s court hears cases in which fine and forfeited bail moneys may be paid to the township. A village is not, however, required to establish and maintain a mayor’s court. *State ex rel. Boston Heights v. Petsche*, 27

Ohio App. 3d 106, 107, 499 N.E.2d 1250 (Summit County 1985). Additionally, a village mayor may transfer to a court with concurrent jurisdiction cases in which fine and forfeited bail moneys may be paid to the township. R.C. 1905.032(A) provides, in part:

If a person who is charged with a violation of a law or an ordinance is brought before a mayor's court and the violation charged is within the jurisdiction of the court, as set forth in [R.C. 1905.01], the mayor, at any time prior to the final disposition of the case, may transfer it to the municipal court, county court, or court of common pleas with concurrent jurisdiction over the alleged violation. If a mayor transfers a case under this provision, the mayor shall require the person charged to enter into a recognizance to appear before the court to which the case is transferred.

A mayor's court thus is not required to hear cases in which fine and forfeited bail moneys may be paid to the township. If the mayor's court does not hear such cases, the conflict of interest is avoided entirely. Therefore, conflicts of interest arising over the operation of the mayor's court do not render the positions of village mayor and township fiscal officer incompatible when the mayor's court does not hear cases in which fine and forfeited bail moneys may be paid to the township.

The potential conflicts of interest identified in this opinion do not prohibit a person from serving simultaneously as a village mayor and township fiscal officer, provided the mayor's court of the village does not hear cases in which fine and forfeited bail moneys may be paid to the township. In addition, the person, as township fiscal officer, may not participate in the preparation of the township's tax budget or explain to the county budget commission the township's tax budget or the township's need for moneys from the undivided local government fund. Also, the person, as village mayor, may not participate in any deliberations, discussions, negotiations, or votes concerning annexation or detachment proceedings involving the township; a contact between the village and township; tax exemptions that affect township tax levies; village tax levies or bond issues for additional funding when the township has placed a tax levy or bond issue on the ballot; or litigation between the village and township.

Although we have concluded that a person may serve simultaneously in the positions of mayor of a noncharter village that has not adopted an optional statutory plan of government and township fiscal officer of a township that has not adopted a limited home rule government under R.C. Chapter 504 when certain conditions are satisfied, we would be remiss if we failed to advise you that given the number and nature of the potential conflicts of interest it may be impractical for the person to hold both of these positions at the same time. *See generally* 1941 Op. Att'y Gen. No. 3869, p. 445 (syllabus) ("[t]he office of mayor of a village is not per se incompatible with the position of chief clerk in the office of the county engineer, but may become so if the duties of each are so numerous or arduous as to render unlikely a proper execution of both"). If the person is continually removing himself from potential conflicts of interest, the township's or village's affairs may, in general,

suffer or go unattended. In addition, the person as township fiscal officer or village mayor may not perform in a competent manner the important duties he is required by law to perform on behalf of the township or village, respectively. Finally, it is conceivable that the situation could reach the point where village and township officials are spending an inordinate amount of time and effort determining whether the person can avoid sufficiently the conflicts of interest and effectively carry out the duties of both positions. In light of these practical concerns, we strongly urge you and the other local officials involved to carefully consider the multitude of potential problems that may occur when a person serves simultaneously in the positions of township fiscal officer and village mayor.

Conclusions

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

1. The positions of mayor of a noncharter village that has not adopted an optional statutory plan of government and township fiscal officer of a township that has not adopted a limited home rule government under R.C. Chapter 504 are compatible, provided the mayor's court of the village does not hear cases in which fine and forfeited bail moneys may be paid to the township.
2. A township fiscal officer of a township that has not adopted a limited home rule government under R.C. Chapter 504, who also serves as mayor of a noncharter village that has not adopted an optional statutory plan of government, may not participate in the preparation of the township's tax budget or explain to the county budget commission the township's tax budget or the township's need for moneys from the undivided local government fund.
3. A mayor of a noncharter village that has not adopted an optional statutory plan of government, who also serves as a township fiscal officer of a township that has not adopted a limited home rule government under R.C. Chapter 504, may not participate in any deliberations, discussions, negotiations, or votes concerning annexation or detachment proceedings involving the township; a contact between the village and township; tax exemptions that affect township tax levies; village tax levies or bond issues for additional funding when the township has placed a tax levy or bond issue on the ballot; or litigation between the village and township.
4. Conflicts of interest between the positions of mayor of a noncharter village that has not adopted an optional statutory plan of government and township fiscal officer of a township that has not adopted a limited home rule government under R.C. Chapter 504 may render the two positions incompatible if village and township officials are required to devote an inordinate amount of time and effort determining whether the person can avoid sufficiently the conflicts of interest and effectively carry out the duties of both positions.