March 13, 2006

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SYLLABUS: 2006-010

A person may serve simultaneously as a trustee of a township that has adopted a limited home rule government pursuant to R.C. Chapter 504 and investigator in the consumer services division of a county auditor's office when the person's duties as an investigator do not include reviewing matters, or conducting or participating in investigations, involving the township and the township trustee position is normally filled by nonpartisan election.

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OPINION NO. 2006-010

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Dear Law Director Crain:

You have requested an opinion whether the positions of trustee of a township that has adopted a limited home rule government pursuant to R.C. Chapter 504[1] and investigator in the consumer services division of a county auditor's office are compatible when the person's duties as an investigator do not include reviewing matters, or conducting or participating in investigations, involving the township.[2] You have informed us that the office of township trustee is normally filled by nonpartisan election.[3] For the reasons that follow, these two positions are compatible.

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[1] 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").

[2] In your particular situation, the township is located in the county that employs the person as an investigator.

[3] Candidates for township trustee are nominated by petition, rather than in a primary election, unless a majority of the township electors petition for a primary election. R.C. 3513.01; R.C. 3513.253. Candidates for election to trustee in a township in which primary elections are

**Compatibility Test**

In Ohio the test for determining whether two public positions are compatible consists of the following seven questions:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?

2. Do the empowering statutes of either position limit employment in another public position or the holding of another public office?

3. Is one position subordinate to, or in any way a check upon, the other?

4. Is it physically possible for one person to discharge the duties of both positions?

5. Is there an impermissible conflict of interest between the two positions?

6. Are there local charter provisions, resolutions, or ordinances which are controlling?

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

2003 Op. Att'y Gen. No. 2003-041 at 2-335 and 2-336. *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 of the foregoing test concern the applicability of charter provisions, resolutions, or ordinances, and federal, state, and local regulations. No federal or state regulation or local charter provision prohibits a person from serving simultaneously as a township trustee and employee in the county auditor's office. Whether an applicable local resolution, ordinance, or departmental regulation prohibits a person from holding the two positions at the same time is a question for county and township officials to answer. For the

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not held for nomination of candidates by political parties appear on a nonpartisan ballot. R.C. 3505.04.

purpose of this opinion, it is assumed that no local resolution, ordinance, or departmental regulation prohibits the dual service in question.[4]

**Discussion of R.C. 124.57**

Question one of the compatibility test asks whether either of the positions is a classified employment within the terms of R.C. 124.57, which prohibits officers and employees in the classified service of the state, or of a county, city, city school district, or civil service township, from taking part in a variety of activities that occur as part of the regular political process and are partisan in nature.[5] This statute has been construed as prohibiting a classified officer or

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[4] A collective bargaining agreement entered into by the county and the employees of the county auditor's office pursuant to R.C. Chapter 4117 may have a provision that might prohibit an employee in the auditor's office in a given instance from holding another public position. *See generally* R.C. 4117.03(A)(4) (county employees are authorized to bargain collectively with the county "to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements"); R.C. 4117.08(A) ("[a]ll matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section"); R.C. 4117.10(A) ("[a]n agreement between a public employer and an exclusive representative entered into pursuant to [R.C. Chapter 4117] governs the wages, hours, and terms and conditions of public employment covered by the agreement"). Whether the provisions of a collective bargaining agreement apply in a given instance so as to prohibit an employee in the county auditor's office from holding the position of township trustee must be determined on a case-by-case basis by the parties to the agreement. *See generally* 1991 Op. Att'y Gen. No. 91-065 at 2-311 (it is not within the authority of the Attorney General "to render an opinion as to the meaning of language in a specific collective bargaining agreement").

[5] The relevant portions of R.C. 124.57 read as follows:

> *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.)

employee who is covered by the terms thereof from being elected to a public office in a partisan election or accepting a party-sponsored appointment to a public office that is normally filled by partisan election.[6] *See* rule 123:1-46-02(C)(1), (6); 2001 Op. Att'y Gen. No. 2001-034 at 2-202. R.C. 124.57 does not, however, prohibit a classified officer or employee from being elected to a public office in a nonpartisan election or accepting appointment to a public office that is normally filled by nonpartisan election. 2001 Op. Att'y Gen. No. 2001-034 at 2-203; *see* rule 123:1-46-02(C).

In other words, "R.C. 124.57 does the following: it prohibits an officer or employee in the classified service from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service." 2003 Op. Att'y Gen. No. 2003-041 at 2-336; *see* rule 123:1-46-02(C).

We must now determine whether the person as a township trustee or investigator in the consumer services division of a county auditor's office is subject to the restrictions set forth in R.C. 124.57. A township trustee is in the unclassified service because, *inter alia*, it is an elected position. *See* R.C. 124.11(A)(1); R.C. 505.01. *See generally 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,[7] 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 trustee from engaging in partisan political activity. *See generally* rule 123:1-46-02(E) ("[e]mployees in the unclassified service, who serve at the pleasure of the appointing authority and are not subject to competitive examination, are not prohibited from engaging in political activity unless specifically precluded by federal or state constitutional or statutory provisions").

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[6] The terms of a collective bargaining agreement may permit an officer or employee in the classified service to participate in partisan politics. *See* 1991 Op. Att'y Gen. No. 91-065 (syllabus, paragraph one).

[7] For purposes of R.C. Chapter 124, the term "'[c]ivil service township' means any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees, and which has a civil service commission established under [R.C. 124.40(B)]." R.C. 124.01(G). *See generally* R.C. 124.40(B) ("[t]he board of trustees of a township with a population of ten thousand or more persons residing within the township and outside any municipal corporation and which has a police or fire department of ten or more full-time paid employees may appoint three persons who shall constitute the township civil service commission").

The position of investigator in the consumer services division of a county auditor's office is not specifically identified by title as being in the unclassified service. *See* R.C. 124.11(A). As such, the position is in the classified service unless it is identified by particular characteristics that will render the position in the unclassified service.[8] *See generally* R.C. 124.11(B) (the classified service is comprised of all positions "not specifically included in the unclassified service"). Because you have informed us that the office of township trustee is normally filled by nonpartisan election, *see* note three, *supra*, it is unnecessary for us to determine whether the particular characteristics of the position of investigator in the consumer services division of a county auditor's office remove it from the classified service. *See generally* 1998 Op. Att'y Gen. No. 98-020 at 2-104 ("[i]t is axiomatic, however, that classified or unclassified status is not established simply by accepting the title or characterization assigned to an employee's position by the appointing authority. Rather, the determination of classified or unclassified status requires that 'all duties, both assigned and performed, respecting the position must be evaluated.' *Rarick v. Board of County Comm'rs*, 63 Ohio St. 2d 34, 37, 406 N.E.2d 1101, 1103 (1980)" (citations omitted)). As explained above, R.C. 124.57 does not prohibit a person in the classified service from serving in a position that is normally filled by nonpartisan election. Accordingly, the prohibition of R.C. 124.57 does not operate to prevent a person from holding simultaneously the positions of township trustee and investigator in the consumer services division of a county auditor's office when the position of township trustee is normally filled by nonpartisan election.

**Statutes Prohibiting the Holding of Another Public Position**

Question two of the compatibility test asks whether the empowering statutes of either position limit a person from being employed in another public position or holding another public office. A constitutional provision may also prohibit a person from serving in two public positions at the same time.

No constitutional provision or statute prohibits a person from holding simultaneously the positions of township trustee and investigator in the consumer services division of a county auditor's office. *Cf.* R.C. 3.11 ("[n]o person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, and probate judge"); R.C. 319.07 ("[n]o judge or clerk of a court, county commissioner, county recorder, county engineer,

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[8] Positions specifically included in the unclassified service are set forth in R.C. 124.11(A) and various other statutes throughout the Revised Code. Under R.C. 124.11(A), "[s]ome of these positions are identified by title; others are identified more generally by specifying particular characteristics that will render a position unclassified." 1998 Op. Att'y Gen. No. 98-020 at 2-105 n.3. *Compare* R.C. 124.11(A)(4) ("[t]he members of county or district licensing boards or commissions and boards of revision, and deputy county auditors") *with* R.C. 124.11(A)(9) ("[t]he deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency").

county treasurer, or sheriff shall be eligible to the office of county auditor"). The second question of the compatibility test thus may be answered in the negative.

**Subordination and Control**

Question three of the compatibility test asks whether one position is subordinate to, or in any way a check upon, the other. An investigator in the consumer services division of a county auditor's office is appointed and removed by the county auditor, *see* R.C. 325.17; *see also* R.C. 325.27,[9] and is subject to the control of, and accountable to, the county auditor. A township trustee, as an elected township officer, R.C. 505.01, serves and is responsible to the township's electorate. Thus, neither position is responsible for the appointment or removal of the other position. In addition, the positions operate independently of each other, and neither is required to assign duties to, or supervise, the other. Accordingly, neither position is subordinate to, or in any way a check upon, the other.

**Physical Ability to Hold and Serve in Both Positions**

Question four of the compatibility test asks whether it is physically possible for one person to perform the duties of both positions. This is a factual question that is best addressed at the local level since township and county officials may more accurately determine the time constraints and demands imposed upon a township trustee who serves as an investigator in the consumer services division of a county auditor's office.

We caution, however, that a township trustee, as an elected township officer, is required to perform duties imposed by statute and, where the nature of such duties requires the trustee to be present at a particular time or place, or act in a particular manner, the trustee must be able to do so. *See generally* 1965 Op. Att'y Gen. No. 65-70 at 2-146 ("failure to attend to the duties of an office may be sufficient ground for the removal of a township trustee under [R.C. 3.07]"). Also, if a township trustee who is an investigator in the consumer services division of a county auditor's office is required to perform his duties as a trustee during his regular work hours as an investigator, the trustee must take approved vacation or personal leave or leave without pay for the time he is absent from his duties as an investigator.

Therefore, in order to serve simultaneously in the positions of township trustee and investigator in the consumer services division of a county auditor's office, a person must be certain that he will be able to carry out the duties of both positions in a competent and timely

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[9] The job description for the position of investigator in the consumer services division of the county auditor's office indicates that a person appointed to this position is not a deputy auditor. *Compare* R.C. 319.05 ("[t]he county auditor may appoint one or more deputies to aid him in the performance of his duties") *with* R.C. 325.17 (authorizing a county auditor to "appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees" for his office, "fix the compensation of such employees and discharge them").

manner. 2003 Op. Att'y Gen. No. 2003-041 at 2-339. This means that there may not be a direct conflict between the times when the person is needed to perform duties on behalf of the township and county auditor. *Id.*

**Conflicts of Interest**

The fifth and final question of the compatibility test asks whether there is a conflict of interest between the two positions.[10] It is a preeminent principle in Ohio that a person may not serve simultaneously in two public positions if he will be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best interest of the respective political subdivisions he serves. 2003 Op. Att'y Gen. No. 2003-041 at 2-339 and 2-340.

We must now review the powers, duties, and responsibilities of a township trustee and investigator in the consumer services division of a county auditor's office so as to determine whether there are any conflicts of interest between the positions. This review will enable us to determine whether the person will be subject to conflicts of interest when exercising the powers, duties, and responsibilities in either or both positions. If our review discloses such conflicts, 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 both positions. The pertinent factors used in making this determination include, but are not limited to, the probability of the conflict, the ability of the person to remove himself from the conflict (should it arise), whether the person exercises decision-making authority in both positions, and whether the conflict relates to the primary functions of each position, or to financial or budgetary matters. *Id.* at 2-340.

Let us first review the powers, duties, and responsibilities of a trustee of a township that has adopted a limited home rule government pursuant to R.C. Chapter 504. A board of township trustees is the governing body of a township. In this capacity, the board is delegated by statute various powers and duties related to the government of the township. *See, e.g.*, R.C. Chapter 504 (authorizing the trustees of a township that adopts a limited home rule government to adopt and enforce local police, sanitary, and other similar regulations and to supply water and sewer services); R.C. 505.27 (authorizing a board of township trustees to provide for the collection and

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[10] Pursuant to R.C. 102.08, the Ohio Ethics Commission, rather than the Attorney General, is authorized to render advisory opinions regarding the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. In light of R.C. 102.08's specific statutory grant of authority to the Ohio Ethics Commission, we will refrain from interpreting and applying these provisions by way of a formal opinion. 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three). Any questions concerning the interpretation and application of these provisions in the situation in which a person serves simultaneously as a township trustee and investigator in the consumer services division of a county auditor's office should therefore be directed to the Ohio Ethics Commission.

disposal of solid wastes); R.C. 505.37 (authorizing a board of township trustees to provide fire protection); R.C. 505.48 (authorizing a board of township trustees to provide police protection); R.C. Chapter 519 (authorizing a board of township trustees to regulate building and land use in the unincorporated territory of the township); R.C. 5535.01(C) (a board of township trustees is responsible for maintaining the roads under its jurisdiction). In addition, the board handles the township's finances and budget, *see, e.g.*, R.C. 135.04(C); R.C. 135.14; R.C. 5705.28; R.C. 5705.34, and is designated as the township's taxing authority for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law), *see* R.C. 133.01(NN)(7); R.C. 5705.01(C).

We will now turn to the duties and responsibilities of an investigator in the consumer services division of a county auditor's office. The duties of such an investigator are prescribed by the county auditor. In your particular situation, the job description attached to your letter lists the investigator's duties and responsibilities as follows:

> **NATURE OF POSITION:**
>
> Under the direction of the Consumer Services Director, provides support and assistance to the licensing, personal property, and weights and measures departments of the Consumer Services Division, including investigatory services. Performs other related duties as required. Provides a high degree of confidentiality in discharging duties.
>
> ….
>
> **ILLUSTRATIVE DUTIES:**
>
> 1. Provides consumer protection services by assisting with the enforcement of the laws, regulations, and policies of the Consumer Services Division.
>
> 2. Conducts investigations as required to ensure compliance with local licensing, personal property filing, and weights and measures regulations.
>
> 3. Performs varied and responsible management assistance and analysis for all divisions of the [Auditor's] office when required, including complex and sometimes sensitive information collection, review, and evaluation.
>
> 4. Coordinates and participates in special projects as required. (Footnotes omitted.)

*See generally* R.C. 319.55 ("[t]he county auditor shall be county sealer of weights and measures and shall be responsible for the preservation of the copies of all standards in his possession…. The auditor shall see that all state laws relating to weights and measures are strictly enforced

throughout his county, and shall assist generally in the prosecution of all violations of such laws");[11] R.C. 955.07 ("the county auditor shall assign a distinctive number to every dog or dog kennel described in the application and shall deliver a certificate of registration bearing the number to the owner of the dog or dog kennel"); R.C. 3765.01 (authority of a county auditor to issue permits to traveling shows); R.C. 4503.061(A) ("[e]ach owner shall follow the procedures in this section to identify the [manufactured or mobile] home to the county auditor of the county containing the tax district in which the home has situs so that the auditor may place the home on the appropriate tax list"); R.C. 5711.02 ("each taxpayer having taxable personal property with an aggregate taxable value in excess of ten thousand dollars shall make a return to the county auditor of each county in which any taxable property the taxpayer must return is required by this chapter to be listed"); R.C. 5739.17(A) ("the county auditor shall issue to the applicant a license for each fixed place of business designated in the application, authorizing the applicant to engage in business at that location").

A review of the powers, duties, and responsibilities of the respective positions discloses that a conflict of interest occurs when the person, as an investigator in the consumer services division of a county auditor's office, is required to review a matter, or conduct or participate in

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[11] The county auditor has the following powers and duties when enforcing the state laws relating to weights and measures:

> Any weights and measures official elected or appointed for a county or municipality shall have the duties enumerated in [R.C. 1327.50(I)-(M)] and the powers enumerated in [R.C. 1327.51]. These powers and duties shall extend to the respective jurisdictions, except that the jurisdiction of a county official shall not extend to any municipal corporation for which a weights and measures official has been appointed. The director of agriculture shall advise and assist these officials.

R.C. 1327.52. *See generally* R.C. 1327.50(I) (authorizing a county auditor to inspect and test weights and measures kept, offered, or exposed for sale); R.C. 1327.50(J) (authorizing a county auditor to inspect and test weights and measures commercially used); R.C. 1327.50(K) (authorizing a county auditor to "[t]est all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the general assembly"); R.C. 1327.50(L) (authorizing a county auditor to "[a]pprove for use, and may mark, such weights and measures as the director finds to be correct, and shall reject and mark as rejected such weights and measures as the director finds to be incorrect"); R.C. 1327.50(M) (authorizing a county auditor to "[w]eigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery"); R.C. 1327.51 (any weights and measures official acting under the authority of R.C. 1327.52 may, under certain circumstances, enter any commercial premises; issue stop-use, hold, and removal orders; and seize evidence).

an investigation, involving the township in which he serves on the board of trustees.[12] As explained in 1989 Op. Att'y Gen. No. 89-022 at 2-106:

> Prior opinions have held that when a public position requires an individual to conduct an objective investigation or review of another entity, a conflict arises when the individual holds a second position which creates a loyalty to that entity or a predisposition toward the outcome of the review or investigation. This occurs even if the second position does not involve direct authority over or responsibility for the matter being reviewed or investigated.
>
> Review of the positions of township clerk, city planning commissioner, and member of a citizens advisory committee to a school board shows that all three positions are subject to a conflict of interest if the individuals in those positions are required to participate in or supervise an audit of the subdivision in which they serve…. If the duties of an assistant auditor require involvement in an audit of the township, municipality, or school district where he or she serves in one of the above positions, the potential for conflict is immediate, not remote and speculative. (Citations omitted.)

*Accord* 1989 Op. Att'y Gen. No. 89-052 at 2-220.

Thus, if an investigator in the consumer services division of a county auditor's office who serves as a township trustee were required to review a matter, or conduct or participate in an investigation, involving the township, it would be difficult for the person as an investigator to set aside his loyalty to the township. Such a predisposition of loyalty could prevent the person as an investigator from making completely objective and disinterested decisions in a matter or investigation involving the township or result in preferential treatment being accorded to the board of township trustees in a matter or investigation. *See* 1989 Op. Att'y Gen. No. 89-052 at

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[12] Our review of the duties and responsibilities of the person as an investigator in the consumer services division of the county auditor's office discloses that the person is not responsible for issuing warrants for the disbursement of tax moneys or other moneys to townships, *see* R.C. 319.16; R.C. 321.31; R.C. 321.34; R.C. 321.341; R.C. 5747.50(B); R.C. 5747.61(E); *see also* R.C. 321.32, certifying the availability of township moneys, *see* R.C. 513.04; R.C. 5705.39, taking the place of the county auditor on the county budget commission, which is responsible for reviewing township budgets and tax levies, *see* R.C. 5705.27; R.C. 5705.31; R.C. 5705.32; R.C. 5705.34, assessing real property in townships, *see* R.C. 5713.01, endorsing real property conveyances, *see* R.C. 319.20, estimating the rate for township tax levies, *see* R.C. 319.30; R.C. 5705.34, or ascertaining township taxes collected, *see* R.C. 319.451. Accordingly, this opinion does not consider any potential conflicts of interest that may arise when a township trustee who is employed as an investigator in the consumer services division of a county auditor's office is required to perform any of the aforementioned duties or responsibilities in his capacity as an investigator.

2-220; 1989 Op. Att'y Gen. No. 89-022 at 2-106; *see also State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344, 1934 Ohio Misc. LEXIS 1224 (Ct. App. Butler County 1934) (a conflict of interest results when the duties of one position may be administered or discharged in such a way as to result in favoritism and preference being accorded the other position).

We believe, however, that this conflict of interest may be sufficiently avoided. An investigator in the consumer services division of a county auditor's office is not required by statute to review matters, or conduct or participate in investigations, involving the township. Instead, the specific duties and responsibilities of an investigator are prescribed by the county auditor. *See generally* 1989 Op. Att'y Gen. No. 89-052 at 2-219 (a county auditor employee is hired by the county auditor and "is thus responsible to, and subject to the control of, the county auditor"). As such, the authority of an investigator who is also a township trustee may be limited or confined to reviewing matters and conducting or participating in investigations that do not involve the township. *See* 1989 Op. Att'y Gen. No. 89-052 (indicating that the duties of a county auditor employee may be limited by the county auditor); *cf.* 1999 Op. Att'y Gen. No. 99-045 (indicating that the duties of a deputy county auditor may be limited by the county auditor); 1989 Op. Att'y Gen. No. 89-022 at 2-104 (an assistant auditor of state may "perform only limited duties on behalf of the auditor"). *See generally* 1999 Op. Att'y Gen. No. 99-027 at 2-175 ("an assistant prosecuting attorney does not act for or stand in the place of the prosecuting attorney in a particular matter unless so authorized and directed by the prosecuting attorney").

In fact, in your particular situation the county auditor has specifically limited the duties of the investigator in question to ensure that there will be no instances in which the investigator will be responsible for reviewing matters, or conducting or participating in investigations, involving the township. According to the job description for the position of investigator, the investigator, "during his tenure as [a township trustee], will provide services and conduct investigations in all parts of [the county] except [the township], which will be serviced by the Consumer Services Director." It is, therefore, possible for an investigator who serves also as a township trustee to have his duties limited or confined to matters or investigations that do not involve the township.

If this occurs, there should be no instances in which an investigator who serves as a township trustee will be required to review matters, or conduct or participate in investigations, involving the township. As such, a person who serves as a township trustee and an investigator in the consumer services division of a county auditor's office is not subject to any impermissible conflicts of interest when the person's duties as an investigator do not include reviewing matters, or conducting or participating in investigations, involving the township.[13]

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[13] Whether the responsibilities of an investigator in the consumer services division of a county auditor's office who serves as a township trustee include reviewing matters, or conducting or participating in investigations, involving the township is a question of fact that must be determined at the local level. *See* 1989 Op. Att'y Gen. No. 89-022 at 2-104 and 2-105 ("whether the job duties of a particular assistant auditor require any involvement with the

**Conclusion**

In sum, it is my opinion, and you are hereby advised that a person may serve simultaneously as a trustee of a township that has adopted a limited home rule government pursuant to R.C. Chapter 504 and investigator in the consumer services division of a county auditor's office when the person's duties as an investigator do not include reviewing matters, or conducting or participating in investigations, involving the township and the township trustee position is normally filled by nonpartisan election.

Respectfully,

JIM PETRO
Attorney General

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particular township or municipality where he or she holds the additional position depends upon the organizational structure of the office of the auditor of state" and "whether the position of an assistant auditor below the rank of regional administrator operates as a check upon the public office of township clerk or city planning commissioner is a question of fact to be determined in each instance"). Accordingly, if the duties and responsibilities of such an investigator do not include reviewing matters, or conducting or participating in investigations, involving the township, no impermissible conflicts of interest exist. *See generally* 1989 Op. Att'y Gen. No. 89-052 at 2-220 (if a person's duties as a county auditor employee do not involve conducting or participating in an audit of a law library association that employs him as a librarian, "then no conflict [of interest] as such exists, and the two positions would not be incompatible in this regard"); 1989 Op. Att'y Gen. No. 89-016 (syllabus) (the positions of investigator for the county coroner and city police chief are compatible, provided the person as an investigator "is not called upon by the coroner to investigate a death within the jurisdiction of the police chief of the city").