December 2, 1993

OPINION NO. 93-051

The Honorable John R. Lentes
Meigs County Prosecuting Attorney
101 1/2 West Second Street
Pomeroy, Ohio 45769

Dear Prosecutor Lentes:

You have requested an opinion whether the positions of township trustee and house numbering coordinator in the county tax map office are compatible. 1979 Op. Att'y Gen. No. 79-111 sets forth the following seven questions for determining whether two public positions are compatible:

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 the outside employment permissible?

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

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

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

Op. No. 79-111 at 2-367 and 2-368. Questions six and seven are primarily of local concern and it is assumed, for purposes of this opinion, that there are no local departmental regulations, charter provisions, or ordinances that limit the holding of outside employment by a township trustee or house numbering coordinator. There are no applicable federal or state regulations that pertain to these two positions.

R.C. 124.57

Question number one asks whether either of the positions is a classified employment within

the terms of R.C. 124.57, which prohibits classified employees and officers from participating in partisan political activity. The position of township trustee is in the unclassified service, *see* R.C. 124.11(A)(1); R.C. 505.01; thus, a township trustee is not subject to the prohibition of R.C. 124.57. Supplemental information provided indicates that the position of house numbering coordinator is in the classified service. *See* R.C. 124.11(B). Prior opinions of the Attorney General have concluded that "R.C. 124.57 does not prohibit a classified civil servant from also serving as a township trustee, as long as he is appointed trustee or seeks that office in a non-partisan election." 1988 Op. Att'y Gen. No. 88-020 at 2-76; *accord* 1978 Op. Att'y Gen. No. 78-022. Accordingly, if a house numbering coordinator is appointed township trustee or is elected to the position of township trustee in a non-partisan election, the prohibition of R.C. 124.57 does not bar an individual from holding simultaneously the positions of house numbering coordinator and township trustee.

Outside Employment

Question number two asks whether the empowering statutes of either position limit outside employment. No provision in the Revised Code limits the outside employment permissible of a township trustee or house numbering coordinator. Thus, the second question may be answered in the negative.

Subordination or Control

Question number three asks whether one position is subordinate to, or in any way a check upon, the other. As an elected official, *see* R.C. 505.01, a township trustee is responsible to the people who elected him. The house numbering coordinator is employed by the board of county commissioners. The positions of township trustee and house numbering coordinator therefore serve different masters, and neither position is subordinate to the other. *See generally Pistole v. Wiltshire*, 22 Ohio Op. 2d 464, 467, 189 N.E.2d 654, 657-58 (C.P. Scioto County 1961) (a township trustee is responsible to the electors who elected him and a deputy sheriff is responsible to the county sheriff who appointed him; neither position is subordinate to, or a check upon, the other).

Question number three also requires an examination of the powers and duties of both positions to see whether one position controls the other, either directly or indirectly. The powers and duties of a board of township trustees are set forth in R.C. Chapters 504 and 505, and related provisions. A board of township trustees is delegated by statute various powers and duties related to the government of the township. *See, e.g.*, R.C. 504.04(A) (a township that adopts the limited self-government form of government may adopt and enforce local police, sanitary, and other similar regulations); R.C. 505.27 (a board of township trustees may provide, maintain, and operate facilities for, or contract for, the collection, transfer, and disposal of solid wastes); R.C. 505.37 (a board of township trustees may provide fire protection); R.C. 505.48 (a board of township trustees may provide police protection); R.C. 519.02 (a board of township trustees may regulate building and land use in unincorporated territory). The board also has specific powers and duties concerning the construction, reconstruction, resurfacing, improvement, maintenance, and repair of roads located within the boundaries of the township. *See, e.g.*, R.C. 5535.01(C) (a "board of township trustees shall maintain all [township] roads within its township"); R.C. 5571.01(A) (a "board of township

trustees may construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction or any county road, intercounty highway, or state highway within its township"); R.C. 5571.02 (a "board of township trustees shall have control of the township roads of its township and shall keep them in good repair"); R.C. 5573.01 (when a "board of township trustees has determined that any road shall be constructed, reconstructed, resurfaced, or improved, such board shall determine by resolution, by unanimous vote if acting without a petition, and by a majority vote if acting upon a petition, the route and termini of such road, the kind and extent of the improvement, and at the same time shall order the county engineer to make such surveys, plans, profiles, cross sections, estimates, and specifications as are required for such improvement").

According to information provided, the house numbering coordinator is employed by the board of county commissioners and is under the general supervision of the county engineer. *See generally* R.C. 325.14 *and* R.C. 5713.09 (these sections require the county engineer to make, correct, and maintain the county tax map). The duties of the house numbering coordinator involve assigning house numbers to parcels of land located in the unincorporated territory and providing deed descriptions on any land transfer instruments.

Prior opinions of the Attorney General have determined that there are instances in which the position of township trustee may be subordinate to, or act as a check upon, a position under the supervision of the county engineer. 1993 Op. Att'y Gen. No. 93-016; 1991 Op. Att'y Gen. No. 91-069; Op. No. 88-020; *see* R.C. 5541.03; R.C. 5543.01; R.C. 5543.06; R.C. 5543.09-.10; R.C. 5549.03; R.C. 5571.05; R.C. 5573.01; R.C. 5575.01. The fact that a county employee is subject to the supervision of the county engineer, however, does not, in itself, establish the position of township trustee as subordinate to or a check upon that county employment. *See* Op. No. 93-016; Op. No. 88-020. Rather, the specific duties of the individual as a county employee must be examined to determine whether the position of township trustee is subordinate to, or in any way a check upon, a position under the supervision of the county engineer. *See* Op. No. 93-016; Op. No. 88-020.

A review of the duties of the house numbering coordinator in question clearly discloses that the duties of the coordinator do not place the trustees in a position subservient to that of the coordinator or place the coordinator under the control of the township trustees. Moreover, there is no area in which one position controls the other, either directly or indirectly. The positions of township trustee and house numbering coordinator, thus, operate independently of each other, and neither position is subordinate to the other.

Physical Constraints

Question number four asks whether it is physically possible for one individual to perform the duties of both positions. This question requires an inquiry into the time demands of each position. *See, e.g.,* 1991 Op. Att'y Gen. No. 91-036 at 2-195. It is, thus, a factual question that is best answered by the parties involved. *See id.* It seems quite likely, however, that the positions of township trustee and house numbering coordinator can be filled competently by the same person.

Conflict of Interest

Question number five asks whether there is a conflict of interest between the two positions.[1] An individual may not hold two public positions simultaneously if he would be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best interest of the public. 1985 Op. Att'y Gen. No. 85-042 at 2-150. A conflict of interest occurs when an individual's "responsibilities in one position are such as to influence the performance of his duties in the other position, thereby subjecting him to influences which may prevent his decisions from being completely objective." 1980 Op. Att'y Gen. No. 80-035 at 2-149.

A board of township trustees is authorized to "construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction or any county road, intercounty highway, or state highway within its township." R.C. 5571.01(A); *see also* R.C. 5571.02 ("[t]he board of township trustees shall have control of the township roads of its township and shall keep them in good repair"). Pursuant to R.C. 307.15, a board of county commissioners may enter into a contract with a board of township trustees, whereby the board of county commissioners is authorized "to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render." A board of township trustees and board of county commissioners thus may enter into a contract whereby the county agrees to construct, reconstruct, resurface, or improve a public road within the township.

In addition, R.C. 164.15 and R.C. 5555.43 authorize a county and township to enter into a contract concerning the payment of engineering services. R.C. 164.15 provides a board of township trustees "may enter into a contract with the county engineer under which the board agrees to pay all or any part of the cost of engineering services to be provided to or obtained for the township by the county engineer that are necessary for projects awarded under [R.C. Chapter 164 (aid to local government improvements)]." Similarly, R.C. 5555.43 provides the board of county commissioners may contract with a board of township trustees of the township in which a road improvement is situated, whereby the county and township apportion the costs of such improvement. Finally, pursuant to R.C. 5543.13 and R.C. 5543.17, if the county engineer enters into an agreement with an owner of land as to compensation or damages already sustained or to be sustained by the owner of the land, the board of township trustees is required to approve the agreement.

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[1] This opinion does not address potential conflicts of interest that may arise under the ethics provisions of R.C. Chapter 102 and R.C. 2921.42. Under R.C. 102.08, the Ohio Ethics Commission is empowered to render advisory opinions interpreting the provisions of R.C. Chapter 102 and R.C. 2921.42. Since R.C. 102.08 grants the Ohio Ethics Commission the authority to render advisory opinions concerning the ethical provisions of R.C. Chapter 102 and R.C. 2921.42, the Attorney General will not also render opinions concerning these matters. *See* 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three) ("[t]he Attorney General will abstain from rendering an opinion where another governmental entity has been granted the authority to render advisory opinions concerning the relevant subject matter").

If a township and county enter into any of the contracts mentioned above, a township trustee who is employed by the county engineer will be involved in a contract between the township which he represents and the county which employs him. This may present a conflict of interest for that individual. *See* Op. No. 93-016 at 2-90; Op. No. 91-036 at 2-195 and 2-196; Op. No. 88-020 at 2-78. For example, a township trustee's ability to exercise clear and independent judgment on behalf of the township in negotiating or voting upon a contract between the county and township could be called into question because it could be difficult for such individual, as trustee, to set aside his loyalty to his employer, the county engineer. Furthermore, the trustee may not vote in the township's best interest for fear of reprisals, in his position of house numbering coordinator, by the county engineer. Accordingly, when an individual simultaneously holds the positions of township trustee and house numbering coordinator, a potential conflict of interest exists because the individual is subject to influences that may prevent him from discharging in conscientious fashion his duties as township trustee.

That an individual is subject to a potential conflict of interest, however, does not automatically prohibit the simultaneous holding of two public positions. Op. No. 79-111 at 2-372. Instead, each potential conflict of interest should be considered on its particular facts and where the conflict is determined to be remote and speculative, the conflict of interest rule is not violated. *Id.* Factors to be considered in the determination of the immediacy of a conflict of interest include the following:

> the degree of remoteness of a potential conflict, the ability or inability of an individual to remove himself from the conflict, whether the individual exercises decision-making authority in both positions, whether the potential conflict involves the primary functions of each position, and whether the potential conflict may involve budgetary controls.

Id.

Application of these factors to the potential conflicts of interest that result from the simultaneous holding of the positions of township trustee and house numbering coordinator indicates that the potential conflicts are remote and speculative. It is only speculative whether a township will enter into a contract under R.C. 307.15, R.C. 164.15, or R.C. 5555.43 with the county concerning the construction or maintenance of roads, and whether a county engineer will enter into an agreement with the owner of land pursuant to R.C. 5543.13 or R.C. 5543.17 as to compensation or damages already sustained or to be sustained by the owner of land. *See* Op. No. 93-016 at 2-91; Op. No. 88-020 at 2-78 and 2-79. It also would not be difficult for an individual, as township trustee, to remove himself from any conflict of interest by abstaining from voting upon or discussing the construction, repair, or maintenance of roads, or an agreement entered into between the county engineer and an owner of land pursuant to R.C. 5543.13 or R.C. 5543.17. Op. No. 93-016 at 2-91. *But cf.* 1990 Op. Att'y Gen. No. 90-083 at 2-358 (since a board of township trustees has only three members, it would be difficult for a trustee to remove himself from voting on taxing and budgetary matters). Moreover, the individual, as house numbering coordinator, does not exercise decision-making authority in any

matters in conflict. Finally, the potential conflicts of interest do not involve the primary functions of each position or budgetary controls. Therefore, an individual who simultaneously serves as a township trustee and house numbering coordinator under the supervision of the county engineer is not subject to any impermissible conflicts of interest.

Conclusion

Based on the foregoing, it is my opinion, and you are advised, that an individual may hold simultaneously the positions of township trustee and house numbering coordinator in the county tax map office, provided the individual is appointed township trustee or is elected to that position in a non-partisan election, and further provided that the individual, as township trustee, does not participate in negotiations or vote upon a contract entered into between the county and his township pursuant to R.C. 307.15, R.C. 164.15 or R.C. 5555.43, or an agreement entered into between the county engineer and an owner of land pursuant to R.C. 5543.13 or R.C. 5543.17.

Respectfully,

LEE FISHER
Attorney General

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Meigs County Prosecuting Attorney
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Pomeroy, Ohio 45769

SYLLABUS: 93-051

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