June 16, 2008

The Honorable Bradford W. Bailey
Hardin County Prosecuting Attorney
One Courthouse Square, Suite 50
Kenton, Ohio 43326-1575

SYLLABUS: 2008-020

A person may serve simultaneously as a secretary of a park district created pursuant to R.C. Chapter 1545 and deputy county auditor within the same county. However, the person, as a deputy county auditor, may not (1) serve in place of the county auditor on the county budget commission, (2) disburse tax moneys to the park district, (3) certify the park district's appropriation measure or that park district moneys to be expended under a contract are available, (4) issue warrants or handle other financial matters for the park district, (5) certify the availability of county moneys to be paid to the park district under a contract, (6) issue warrants disbursing county moneys to the park district, (7) participate in the preparation of the county's and park district's annual tax budgets, or (8) appear before the county budget commission on behalf of the county and park district to request additional funding.

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June 16, 2008

OPINION NO. 2008-020

The Honorable Bradford W. Bailey
Hardin County Prosecuting Attorney
One Courthouse Square, Suite 50
Kenton, Ohio 43326-1575

Dear Prosecutor Bailey:

You have requested an opinion whether the positions of secretary of a park district[1] and deputy county auditor within the same county are compatible. For the reasons that follow, the positions are compatible when the duties of the deputy county auditor do not include (1) serving in place of the county auditor on the county budget commission, (2) disbursing tax moneys to the park district, (3) certifying the park district's appropriation measure or that park district moneys to be expended under a contract are available, (4) issuing warrants or handling other financial matters for the park district, (5) certifying the availability of county moneys to be paid to the park district under a contract, (6) issuing warrants disbursing county moneys to the park district, (7) participating in the preparation of the county's and park district's annual tax budgets, or (8) appearing before the county budget commission on behalf of the county and park district to request additional funding.

Compatibility Test

The following seven-question test is used in determining whether a person may serve in two public positions at the same time:

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

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[1] Because you have informed us that the park district was created in accordance with the provisions of R.C. Chapter 1545, we will use the term park district throughout this opinion to refer to a park district that has been created pursuant to R.C. Chapter 1545.

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?

2007 Op. Att'y Gen. No. 2007-037 at 2-377. *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").

The sixth and seventh questions ask about the applicability of charter provisions, resolutions, or ordinances, and federal, state, and local regulations. No federal or state regulation prohibits a person from serving simultaneously as a secretary of a park district and county deputy auditor.[2] Whether an applicable local charter provision, resolution, ordinance, or departmental

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[2] 5 U.S.C. § 1502(a)(3) provides that "[a] State or local officer or employee may not … be a candidate for elective office." 5 U.S.C. § 1501(4), in turn, defines a "[s]tate or local officer or employee" as

> an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or Federal agency, but does not include … an individual who exercises no functions in connection with that activity[.]

Under 5 U.S.C. § 1502(a)(3), if a local officer or employee is employed principally "in connection with an activity which is financed in whole or in part by loans or grants made by the United States or Federal agency," and exercises some function in connection with that activity, the local officer or employee may not be a candidate for elective office. This federal prohibition does not apply to a situation involving a deputy county auditor and secretary of a park district since neither position is an elective office. *See* R.C. 319.05; R.C. 325.17; R.C. 1545.07.

regulation bars a person from serving in these two positions simultaneously is a question for local officials to answer. For the purpose of this opinion, it is assumed that no local charter provision, resolution, ordinance, or departmental regulation prohibits such dual service.[3]

Discussion of R.C. 124.57

The first question asks whether either of the positions is a classified employment within the terms of R.C. 124.57, which reads, in part, 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.)

R.C. 124.57(A).

R.C. 124.57(A) prohibits, among other things, a classified officer or employee who is covered by the terms thereof from seeking election or appointment to, or holding, a partisan

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[3] A collective bargaining agreement entered into by a public employer and its employees pursuant to R.C. Chapter 4117 may contain language that might prohibit an employee covered by the agreement from holding another public position. *See generally* R.C. 4117.03(A)(4) (public employees are authorized to bargain collectively with a public employer "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 a deputy county auditor or secretary of a park district from serving in another public position must be addressed 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 office of the Attorney General "to render an opinion as to the meaning of language in a specific collective bargaining agreement").

political office,[4] 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. *See* rule 123:1-46-02(C)(1), (6); 2007 Op. Att'y Gen. No. 2007-037 at 2-379. R.C. 124.57(A) 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. 2007 Op. Att'y Gen. No. 2007-037 at 2-379; *see* rule 123:1-46-02(C).

Let us now consider whether the person as a deputy county auditor or secretary of a park district is an officer or employee that is subject to R.C. 124.57(A)'s prohibitions. A member of your staff has informed us that the position of deputy county auditor is in the unclassified service of the county. *See* R.C. 124.11(A)(9) (the unclassified service of a county includes "those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination"); R.C. 124.11(A)(28) (the unclassified service of a county includes "the deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals or holding a fiduciary relation to their principals"). R.C. 124.57(A) thus does not prohibit the person, as a deputy county auditor, from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities.[5] *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").

Positions with a park district also are not in the classified service for purposes of R.C. 124.57(A)'s prohibition. As summarized in 2000 Op. Att'y Gen. No. 2000-025 at 2-167:

> Because R.C. 124.57 does not expressly refer to officers or employees in the service of a park district created pursuant to R.C. Chapter 1545, the officers and

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[4] A provision in a municipal charter, ordinance, or collective bargaining agreement may permit an officer or employee in the classified service to seek election or appointment to, and serve in, a partisan political office. 2006 Op. Att'y Gen. No. 2006-005 at 2-47 n.6; 1991 Op. Att'y Gen. No. 91-065 (syllabus, paragraph one).

[5] While R.C. 124.57(A)'s prohibition does not apply to a deputy county auditor in the unclassified service of the county, a local departmental rule or policy of the county may limit or prohibit the deputy county auditor from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities. *See Painter v. Graley*, 70 Ohio St. 3d 377, 639 N.E.2d 51 (1994); *State ex rel. Vana v. Maple Heights City Council*, 54 Ohio St. 3d 91, 561 N.E.2d 909 (1990); 1994 Op. Att'y Gen. No. 94-087 at 2-431. We will assume, for the purpose of this opinion, that the county has no such rule or policy.

> employees of such districts are not in the classified civil service for purposes of R.C. 124.57. *See* 1934 Op. Att'y Gen. No. 2882, vol. II, p. 971; 1919 Op. Att'y Gen. No. 125, vol. I, p. 217. The prohibition of R.C. 124.57 thus does not apply [to such officers and employees].

Accordingly, the prohibition of R.C. 124.57(A) does not operate to prevent a person from holding simultaneously the positions of deputy county auditor and secretary of a park district.

Constitutional Provisions and Statutes Prohibiting the Holding of Another Public Position

The second question asks whether a constitutional provision or the empowering statutes of either position proscribe employment in another public position or the holding of another public office. No constitutional provision or statute prohibits a person from serving as a deputy county auditor and secretary of a park district at the same time. Question two of the compatibility test is therefore answered in the negative.

Subordination and Control

The third question asks whether one position is subordinate to, or in any way a check upon, the other. A deputy county auditor is appointed and removed by, and under the control of, the county auditor. R.C. 319.05; R.C. 325.17; *see also* 2007 Op. Att'y Gen. No. 2007-020 at 2-211 (the power to appoint a person to a position includes the concomitant power to remove the person from the position). The secretary of a park district is employed and removed by, and performs duties on behalf of, the board of commissioners of the park district. R.C. 1545.07; *see also* 2007 Op. Att'y Gen. No. 2007-020 at 2-211 (the power to discharge employees is incidental to the power to hire them).

A review of the provisions of law governing the respective positions thus discloses that 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. Hence, neither position is subordinate to, or in any way a check upon, the other.

Physical Ability to Hold and Serve in Both Positions

The fourth question 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 by local officials since they may more accurately determine the time constraints and demands imposed upon a person who serves simultaneously as a deputy county auditor and secretary of a park district. *See* 2007 Op. Att'y Gen. No. 2007-037 at 2-383 and 2-384.

However, in order to serve simultaneously in the positions of deputy county auditor and secretary of a park district, the person must be certain that she will be able to discharge the duties of both positions in a competent and timely manner. *See id.* at 2-384. This means that there may

not be a direct conflict between the times when the person is needed to perform duties for the county and park district.[6] *Id.*

Conflicts of Interest

The fifth and final question asks whether there is a conflict of interest between the two positions.[7] It is well established 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.

The determination of whether a conflict of interest exists between two public positions requires a study of the powers, duties, and responsibilities of the positions. This study will enable us to identify whether a person who serves in both positions simultaneously will be subject to conflicts of interest while exercising the powers, duties, and responsibilities in either or both positions. If our study discloses any conflicts of interest between the two positions, we must next evaluate the immediacy of such conflicts to determine whether the conflicts may be sufficiently avoided or eliminated entirely. The relevant factors used in making this determination include, but are not limited to, the probability of the conflict, the ability of the person to remove herself 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. 2007 Op. Att'y Gen. No. 2007-037 at 2-384 and 2-385.

We will consider first the powers, duties, and responsibilities of a deputy county auditor. A county auditor appoints deputy county auditors "to aid him in the performance of his duties." R.C. 319.05; *see* R.C. 325.17. A deputy county auditor may perform any of the county auditor's

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[6] If the person is required to perform her duties as a secretary for a park district during her regular work hours as a deputy county auditor, the person must take approved vacation or personal leave or leave without pay for the time she is absent from her duties as a deputy county auditor. Similarly, the person should not perform her duties as a deputy county auditor during the hours she is required to perform her duties as a secretary for the park district unless she does so after having been granted appropriate leave time by the board of commissioners of the park district.

[7] The Ohio Ethics Commission, rather than the office of the Attorney General, is empowered to opine on the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. R.C. 102.08. We will, therefore, refrain from interpreting and applying these provisions by way of a formal opinion. 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three). Questions concerning the interpretation and application of these provisions in the situation in which a person serves concurrently as a deputy county auditor and secretary of a park district should instead be directed to the Ohio Ethics Commission.

duties. R.C. 3.06; *see also* 2006 Op. Att'y Gen. No. 2006-042 at 2-412 (deputy county auditors are hired and compensated by county auditors to perform duties on their behalf); 1960 Op. Att'y Gen. No. 1640, p. 559 (syllabus) ("[b]y virtue of [R.C. 319.05 and R.C. 3.06], a deputy county auditor, in the absence of the county auditor, may sign, execute and deliver a deed to the purchaser in a forfeited land sale held under the provisions of [R.C. 5723.12]").

A county auditor is responsible for preparing the county's financial report, R.C. 319.11, certifying all moneys into the county treasury, R.C. 319.13, and issuing warrants on the county treasury for all moneys payable from the county treasury, R.C. 319.16; *see* R.C. 5747.50. The county auditor also endorses real property conveyances, R.C. 319.20, compiles the general personal property tax list and duplicate, R.C. 319.29, determines the amount of tax to be levied upon each tract of real property, R.C. 319.30, ascertains the net amount of taxes collected for each particular purpose, R.C. 319.451, and serves as county sealer of weights and measures, R.C. 319.55. Additional duties of a county auditor include serving as a member of the county budget commission, R.C. 5705.27, filing a certificate that the total appropriation from a fund does not exceed the official estimate or amended official estimate, R.C. 5705.39, and certifying to bond issuing authorities and fiscal officers of subdivisions all data necessary to determine the indirect debt limitation, R.C. 5705.51.

A county auditor also serves as the fiscal officer of a park district when no treasurer is appointed by the district's board of commissioners pursuant to R.C. 1545.07. *See* R.C. 1545.22; R.C. 5705.01(D). In this capacity, the county auditor is required to certify the availability of moneys to be expended by the park district pursuant to a contract and disburse the park district's moneys:

> The county auditor shall be an ex officio officer of the board, and no contract of the board involving the expenditure of money shall become effective until the auditor certifies that there are funds of the board in the custody of the county treasurer and otherwise unappropriated sufficient to provide therefor. The auditor shall draw warrants on the treasurer to disburse the funds of the board upon order of the board, evidenced by the certificate of its secretary.

R.C. 1545.22(B)(2); *see also* R.C. 319.16; R.C. 5705.41(D).

Let us now review the powers, duties, and responsibilities of a secretary of a park district. A person employed in this position performs duties that enable the park district's board of commissioners to perform its duties and exercise its powers.[8] R.C. 1545.07.

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[8] A board of commissioners of a park district is the governing body of the park district. In this capacity, the board is delegated by statute various powers and duties related to the government of the park district. *See, e.g.*, R.C. 1545.09 (a board of park commissioners shall adopt bylaws and rules to preserve order and protect property within the district); R.C. 1545.13

You have informed us that the secretary of the park district is responsible for taking the minutes of the meetings of the district's board of commissioners. *See generally* R.C. 1545.08 (a board of park commissioners "shall keep an accurate and permanent public record of all of its proceedings"). The secretary also performs clerical tasks for the district's board of commissioners, including submitting unpaid bills to the county auditor for payment and preparing and maintaining the billing records and minutes of the meetings of the district's board of commissioners. *See generally* R.C. 121.22(C) ("[t]he minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection"); R.C. 1545.08 (a board of park commissioners shall compile information relating to the park district and to the proceedings and functions of the board).

A review of the powers, duties, and responsibilities of the respective positions discloses several impermissible conflicts of interest between the two positions.[9] First, a deputy county auditor may serve in place of the county auditor on the county budget commission. 1999 Op. Att'y Gen. No. 99-045 at 2-281; 1931 Op. Att'y Gen. No. 3791, vol. III, p. 1417, at 1419; *see* R.C. 3.06. *See generally* R.C. 5705.27 (the county auditor is a member of the county budget commission).

The county budget commission is responsible for making decisions that affect the finances of the park districts located within the county. For example, R.C. 5747.50-.55 set forth provisions governing the creation and operation of the undivided local government fund. A park district is a subdivision for purposes of R.C. 5747.50-.55, R.C. 5747.01(Q)(1), and, as such, is entitled to receive moneys from the undivided local government fund. *See Warren County Park Dist. v. Warren County Budget Comm'n*, 37 Ohio St. 3d 68, 68, 523 N.E.2d 843 (1988). A park district's share of the moneys of the undivided local government fund is determined by the county budget commission. R.C. 5747.51.

In addition, the county budget commission makes decisions that may modify or reduce a tax levy of a park district. As a taxing unit for purposes of R.C. Chapter 5705 (tax levy law),

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(a board of park commissioners may employ law enforcement officers). The board also prepares the park district's budget, R.C. 5705.28, and may levy taxes on the real property within the park district to provide funding for the district, R.C. 1545.20; R.C. 1545.21; R.C. 5705.03.

[9] You state in your letter that the duties of the deputy county auditor in question relate to bookkeeping and financial recordkeeping. We shall presume this means that none of the person's powers, duties, and responsibilities as a deputy county auditor concern appraising real property, *see* R.C. 5713.01(E), taking the place of the county auditor on the county board of revision or a hearing board of the county board of revision, *see* R.C. 5715.02, or the enforcement of state laws relating to weights and measures, *see* R.C. 319.55. Accordingly, this opinion does not consider any potential conflicts of interest that may arise when a secretary of a park district who is also employed as a deputy county auditor is required to perform any of the aforementioned duties or responsibilities on behalf of the county auditor.

R.C. 5705.01(H), a park district is required to submit its annual tax budget to the county budget commission unless R.C. 5705.28(B) or R.C. 5705.281 apply.[10] R.C. 5705.28(A); *see also* R.C. 5705.29-.32. The county budget commission examines the park district's tax budget along with other tax budgets submitted to the commission to distinguish actual governmental needs from merely claimed needs or wants. R.C. 5705.31; R.C. 5705.32. After reviewing the tax budgets, the county budget commission then revises and adjusts the estimate of balances and receipts from all sources for each fund within the tax budgets and adjusts the tax levies of various governmental entities, including park districts. R.C. 5705.31; R.C. 5705.32. *See generally* 1979 Op. Att'y Gen. No. 79-063 (syllabus, paragraph three) ("[i]n determining whether a park district levy should be certified, the budget commission may take into account the fact that to certify the park levy would necessitate a reduction in other levies, and may decline to certify the levy for that reason"); 1966 Op. Att'y Gen. No. 66-139 (syllabus) ("[t]he County Budget Commission is required to consider the request of a County Park District for a tax levy, under the provisions of [R.C. 1545.20], and to certify such levy, or such modification thereof as it deems advisable, to the County Auditor to be placed upon the tax duplicate"). If a deputy county auditor who serves as a secretary of a park district located within the county and on the county budget commission for the county auditor were required to deliberate, discuss, negotiate, or vote on the disbursement of the moneys in the undivided local government fund or the modification of tax levies, it might be difficult for the deputy county auditor to perform her duties and exercise her discretion in a completely objective and disinterested manner because of her position as secretary of the park district.[11] *See* 1999 Op. Att'y Gen. No. 99-045 at 2-281; 1989 Op. Att'y Gen. No. 89-007 at 2-29 and 2-30.

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

[11] It might be argued that the county auditor, as a member of the county budget commission, is placed in a similar position of conflict with respect to approval of the park district budget when the county auditor acts as the fiscal officer of the park district. *See* R.C. 1545.22 (when the board of commissioners of a park district does not appoint a treasurer, the county auditor shall be an ex officio officer of the board); R.C. 5705.01(D) (the county auditor may serve as the fiscal officer of a park district). That situation is different, however, since the county auditor does not receive compensation from the park district for serving as the district's fiscal officer or have any other pecuniary interest in the park district's budget. *See generally* 1977 Op. Att'y Gen. No. 77-040 at 2-143 ("[t]he terms of R.C. 1545.22 make no provision for compensation of the county auditor and county treasurer for the performance of the duties thereby imposed. Such duties must, therefore, be regarded as a part of the overall statutory duties of these officers, for which compensation is provided by R.C. 325.03 and R.C. 325.04, respectively").

We believe, however, that this conflict of interest can be sufficiently avoided. A deputy county auditor may not be required to take the place of the county auditor on the county budget commission. If the duties of a deputy county auditor do not include taking the place of the county auditor on the county budget commission, the deputy county auditor adheres to the basic principle that she not participate in matters in which her objectivity might be impaired. It reasonably follows, therefore, that the foregoing conflict of interest does not prevent a person from serving simultaneously in the positions of deputy county auditor and secretary of a park district so long as the person, as a deputy county auditor, does not serve in place of the county auditor on the county budget commission. *See* 1999 Op. Att'y Gen. No. 99-045 (syllabus) ("[a] person may serve simultaneously as a deputy county auditor and township clerk within the same county, provided that as deputy county auditor the person does not substitute for the county auditor on the county budget commission").

Additional impermissible conflicts of interest between the two positions may arise because of competition over tax moneys generated within the ten-mill limitation[12] and moneys in the undivided local government fund. As explained previously, except as provided in R.C. 5705.28(B) or R.C. 5705.281, a park district is 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. Similarly, the county, as a subdivision for purposes of R.C. Chapter 5705 (tax levy law), R.C. 5705.01(A), is required to prepare and adopt an annual tax budget and submit that budget to the county budget commission. R.C. 5705.28(A); *see also* R.C. 5705.29-.32. After the annual tax budgets are submitted, the county budget commission revises and adjusts the estimate of balances and receipts from all sources for each fund within the county's and park district's tax budget and adjusts the tax levies of the county and park district within the ten-mill limitation. R.C. 5705.31; R.C. 5705.32. Such adjusting of the tax levies by the county budget commission creates competition between a county and park district for tax moneys generated within the ten-mill limitation.

Additionally, a county and park district compete for moneys in the undivided local government fund. R.C. 5747.50-.55 provide for the disbursement of the moneys in the undivided local government fund. Under R.C. 5747.50-.55, a subdivision may be apportioned moneys from the undivided local government fund. Both a county and park district are included within the definition of "subdivision" for purposes of R.C. 5747.50-.55. R.C. 5747.01(Q)(1). As subdivisions, a county and park district have an interest in the disbursement of the moneys in the

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[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.

undivided local government fund. Each seeks to obtain as much moneys from the undivided local government fund as it can. This means that a county and park district, as well as other subdivisions, compete against each other for the moneys in the undivided local government fund.

A person who serves as a deputy county auditor may be required to participate in the preparation of the county's annual tax budget since the county auditor is the county's fiscal officer. R.C. 5705.28(D). The person also may have to explain to the county budget commission the county's annual tax budget or the county'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 deputy county auditor for a county auditor who serves as the fiscal officer of a park district may also be required to assist in preparing the park district's annual tax budget. R.C. 5705.28(D). In addition, the person may be required by the county auditor to explain to the county budget commission the park district's need for moneys from the undivided local government fund.[13] *See* R.C. 5747.51(B).

Accordingly, if a person who serves as a deputy county auditor and secretary of a park district were to assist in the preparation of the county's and park district's annual tax budgets or appear before the county budget commission on behalf of the county and park district to request additional funding, the person might be subject to influences that could prevent her from making completely objective and disinterested decisions. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35.

The foregoing tax and budgetary conflicts of interest can be sufficiently avoided. A deputy county auditor is not required by statute to prepare the county's or park district's tax budget or present the county's budget to the county budget commission. Instead, R.C. 5705.28 requires the board of county commissioners and the board of park commissioners, as the taxing authorities of the county and park district, respectively, *see* R.C. 1545.20; R.C. 5705.01(C), to adopt the county's and park district's annual tax budgets. Also, a deputy county auditor is not statutorily required to explain to the county budget commission the county's or park district's need for moneys from the undivided local government fund. Thus, a person who serves as a

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[13] Insofar as R.C. 5705.32(E) authorizes a "subdivision," but not a "taxing unit," to have a representative appear before the county budget commission to explain the subdivision's annual tax budget, it appears that a park district, as a "taxing unit," is not entitled to have a representative explain to the county budget commission the park district's annual tax budget. *Compare* R.C. 5705.01(A) (defining a subdivision for purposes of R.C. Chapter 5705) *with* R.C. 5705.01(H) (defining a taxing unit for purposes of R.C. Chapter 5705). *See generally Warren County Park Dist. v. Warren County Budget Comm'n*, 37 Ohio St. 3d 68, 69-70, 523 N.E.2d 843 (1988) ("R.C. 5705.01 contains definitions of terms applicable to R.C. Chapter 5705. The definition of 'subdivision' in R.C. 5705.01(A) does not include a park district, nor does R.C. 5705.01(C) list a 'taxing authority' for a park district. A park district is listed as a 'taxing unit[,]' R.C. 5705.01(H)[,]" and, as such, is not a "subdivision" for purposes of R.C. Chapter 5705).

deputy county auditor and secretary of a park district may avoid the conflicts of interest involving competition over tax moneys generated within the ten-mill limitation or for moneys in the undivided local government fund. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35.

In addition, the fact that a deputy county auditor holds an additional employment with a political subdivision that competes with the county 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 deputy county auditor is subject to an impermissible conflict of interest. *See id*. If this reason were deemed sufficient, a deputy county auditor would not be permitted to hold any employment or office with a political subdivision that competes with the county for tax moneys generated within the ten-mill limitation and moneys from the undivided local government fund. *See id*.

Moreover, while the county and park district 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 county and park district tax proceeds within the ten-mill limitation and moneys from the undivided local government fund. *See* 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 the county and a park district for moneys in the undivided local government fund are, as a general matter, avoidable. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35 and 2-36.

However, such conflicts are not avoided when the person, as a deputy county auditor, is required to prepare the county's and park district's annual tax budgets or appear before the county budget commission on behalf of the county and park district to request additional funding.[14] *See id* at 2-36. An impermissible "conflict of interest exists where one person, who

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[14] Prior opinions of the Attorneys General have indicated that a person who holds two public positions with governmental entities that compete for tax moneys generated within the ten-mill limitation and moneys in the undivided local government fund is not subject to an impermissible conflict of interest when the person does not participate in the preparation of competing annual tax budgets or appear before the county budget commission on behalf of both entities to request additional funding. *See, e.g.*, 2007 Op. Att'y Gen. No. 2007-023 (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 when the 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); 2003 Op. Att'y Gen. No. 2003-006 (finding the positions of township clerk (now township fiscal officer) and county commissioner compatible when the township clerk does not prepare or present the township's tax budget to the county budget commission or explain to the

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 deputy county auditor and secretary of a park district could not avoid the aforementioned conflicts if the county auditor were to require the person, as a deputy county auditor, to prepare the county's and park district's annual tax budgets or appear before the county budget commission on behalf of the county and park district to request additional funding. *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 deputy county auditor and secretary of a park district thus is subject to an impermissible conflict of interest when she is required to participate in the preparation of the county's and park district's annual tax budgets or appear before the county budget commission on behalf of the county and park district to request additional funding. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-36.

To sum up, therefore, conflicts of interest arising because of the competition over tax moneys generated within the ten-mill limitation and the competition between the county and a park district for moneys in the undivided local government fund do not exist and do not render the positions of deputy county auditor and secretary of a park district incompatible, unless the person, as a deputy county auditor, is required to participate in the preparation of the county's and park district's annual tax budgets or appear before the county budget commission on behalf of the county and park district to request additional funding. *See id.*

Other impermissible conflicts of interest exist if the person, as a deputy county auditor, is required to disburse tax moneys to the park district or certify the park district's appropriation measure. A county auditor is responsible for disbursing tax moneys to a park district. *See, e.g.*, R.C. 321.31; R.C. 321.34; R.C. 5747.50(B). Also, pursuant to R.C. 5705.39, the county auditor certifies the park district's appropriation measure.[15] If a person who serves as a deputy county

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county budget commission the township's need for moneys from the undivided local government fund and the undivided local government revenue assistance fund); 2002 Op. Att'y Gen. No. 2002-021 (syllabus) ("[a] person may serve simultaneously as clerk-treasurer of the Village of Manchester and clerk of Manchester Township, provided that he does not prepare competing annual tax budgets for the village and township and present those budgets to the county budget commission").

[15] A board of commissioners of a park district is required to pass an annual appropriation measure. R.C. 5705.38. This appropriation measure does not become effective, however, until the county auditor files with the board of commissioners "a certificate that the total appropriations from each fund, taken together with all other outstanding appropriations, do not exceed such official estimate or amended official estimate." R.C. 5705.39. When the county

auditor and secretary of a park district were required, as a deputy county auditor, to disburse tax moneys to the park district or certify the park district's appropriation measure, it might be difficult for the person to make fair and impartial decisions while performing these tasks because of her employment with the park district.

Additional impermissible conflicts of interest exist because a deputy county auditor may be required by the county auditor to certify that park district moneys to be expended under a contract are available or issue warrants disbursing the moneys of the park district. As explained above, R.C. 1545.22(B)(2) requires a county auditor to certify that park district moneys to be expended under a contract are available and issue warrants disbursing the moneys of the park district when a park district's board of commissioners has not appointed a treasurer. If the county auditor delegates these duties to a deputy county auditor who is a secretary of a park district, the deputy county auditor is subject to the temptation of acting in a manner not in the best interest of the public.

A final impermissible conflict of interest exists when the county and park district enter into a contract with each other that requires the county to pay the park district for a service. *See, e.g.*, R.C. 1545.131 (a park district may contract to provide police protection to the county sheriff). When a contract requires the county to pay the park district for a service, the county auditor or one of his deputies is 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 issue a warrant disbursing county moneys to the park district, *see* R.C. 319.16. In such a situation, a deputy county auditor's responsibilities as secretary of a park district could improperly influence the performance of her duties as a deputy county auditor, thereby subjecting her to a conflict of interest.

For the same reasons discussed above, we believe that these impermissible conflicts of interest can be sufficiently avoided. The duties of a deputy county auditor may not include disbursing tax moneys to the park district, certifying the park district's appropriation measure or that park district moneys to be expended under a contract are available, issuing warrants or handling other financial matters for the park district, certifying the availability of county moneys to be paid to the park district under a contract, or issuing warrants disbursing county moneys to the park district. If a deputy county auditor does not perform these duties, a person who serves as a deputy county auditor and secretary of a park district is not, as a deputy county auditor, subject to conflicts of interest involving the financial matters of the park district. Accordingly, a person may serve as a deputy county auditor and secretary of a park district when the duties of the deputy county auditor do not include disbursing tax moneys to the park district, certifying the park district's appropriation measure or that park district moneys to be expended under a contract

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auditor determines that a park district's appropriation measure does not exceed the official estimate, the auditor shall give such certificate forthwith upon receiving from the district's board of commissioners a certified copy of the district's appropriation measure. *Id.*

are available, issuing warrants or handling other financial matters for the park district, certifying the availability of county moneys to be paid to the park district under a contract, or issuing warrants disbursing county moneys to the park district. *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 a 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").

Although we have concluded that a deputy county auditor may serve as the secretary of a park district when the deputy county auditor does not perform certain duties on behalf of the county auditor, we must caution you that it may not be possible for the deputy county auditor to refrain from performing those duties. For instance, the county auditor may expressly require the deputy county auditor to perform those duties. *See generally* 2006 Op. Att'y Gen. No. 2006-034 at 2-316 (the chief deputy treasurer or a deputy treasurer is required to serve in place of the county treasurer on the county budget commission or a hearing board of the county board of revision when the county treasurer directs him to do so). Also, if the county auditor does not employ many deputies, it may be incumbent upon a deputy county auditor who serves as the secretary of a park district to undertake one or more of the tasks identified above. Finally, the qualifications of the other deputies of the county auditor or the procedures used by the county auditor to process the financial paperwork of the county and park district may not allow a deputy county auditor who serves as a secretary of a park district to extricate herself from situations involving matters concerning the park district.

Whether the deputy county auditor in question performs specific duties that result in an impermissible conflict of interest between the positions of deputy county auditor and secretary of a park district is, however, a question of fact that must be answered by you and the county auditor, rather than the office of the Attorney General. *See generally* 1987 Op. Att'y Gen. No. 87-082 (syllabus, paragraph three) ("R.C. 109.14 does not authorize the Attorney General to decide questions of fact by means of an opinion"). Accordingly, we urge you and the county auditor to consider carefully the practicality of having the deputy county auditor in question refrain from serving in place of the county auditor on the county budget commission, disbursing tax moneys to the park district, certifying the park district's appropriation measure or that park district moneys to be expended under a contract are available, issuing warrants or handling other financial matters for the park district, certifying the availability of county moneys to be paid to the park district under a contract, issuing warrants disbursing county moneys to the park district, participating in the preparation of the county's and park district's annual tax budgets, and appearing before the county budget commission on behalf of the county and park district to request additional funding. If it is determined that the deputy county auditor is required to perform any of these duties, the deputy county auditor may not hold the position of secretary of a park district.

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that a person may serve simultaneously as a secretary of a park district created pursuant to R.C. Chapter 1545 and deputy county auditor within the same county. However, the person, as a deputy county auditor, may not (1) serve in place of the county auditor on the county budget commission, (2) disburse tax moneys to the park district, (3) certify the park district's appropriation measure or that park district moneys to be expended under a contract are available, (4) issue warrants or handle other financial matters for the park district, (5) certify the availability of county moneys to be paid to the park district under a contract, (6) issue warrants disbursing county moneys to the park district, (7) participate in the preparation of the county's and park district's annual tax budgets, or (8) appear before the county budget commission on behalf of the county and park district to request additional funding.

Respectfully,

Nancy H. Rogers

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Attorney General