July 6, 2004

The Honorable Frank Pierce
Belmont County Prosecuting Attorney
Courthouse Annex No. 1
147 West Main Street
St. Clairsville, Ohio 43950

SYLLABUS: 2004-025

A person may serve simultaneously as a member of the board of education of an exempted village school district and clerk-treasurer of a noncharter village located within the territory of the school district, provided that as a board member she does not participate in any deliberations, discussions, negotiations, or votes concerning contracts with the village, tax exemptions granted by the village, or tax levies or bond issues for additional funding when the village has placed such a levy or bond issue on the ballot. As village clerk-treasurer, she may not prepare or present the village's tax budget to the county budget commission. (1916 Op. Att'y Gen. No. 1237, vol. I, p. 205 and 1914 Op. Att'y Gen. No. 862, vol. I, p. 462, clarified; 1903-1907 Annual Report of the Attorney General, p. 143, overruled on the basis of statutory amendment.)

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

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

July 6, 2004

OPINION NO. 2004-025

The Honorable Frank Pierce
Belmont County Prosecuting Attorney
Courthouse Annex No. 1
147 West Main Street
St. Clairsville, Ohio 43950

Dear Prosecutor Pierce:

You have requested an opinion whether the positions of member of the board of education of an exempted village school district and clerk-treasurer of a noncharter village[1] located within the territory of the school district are compatible. For the reasons that follow, it is our opinion that, except under certain circumstances, these two positions may be held simultaneously by the same person.

Compatibility Test

The following seven questions are used to determine whether one person may hold two public positions simultaneously:

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?

---

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

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.

Questions six and seven ask about the applicability of charter provisions, resolutions, ordinances, and federal, state, and local regulations. With respect to the two positions you ask about, there are no applicable charter provisions or state or federal regulations. Whether there is an applicable resolution, ordinance, or local departmental regulation is a matter for local officials to determine. For the purpose of this opinion, it is assumed that no resolution, ordinance, or local departmental regulation prevents a person from serving as a village clerk-treasurer and member of a board of education of an exempted village school district.

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. This statute 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.[2] As explained in 2003 Op. Att'y Gen. No. 2003-041 at 2-336, "R.C. 124.57 does the following: it prohibits an officer or employee in the classified service from seeking election or appointment

---

[2] R.C. 124.57 provides, in relevant part:

> *No officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state* shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; … *nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state* be an officer in any political organization or *take part in politics* other than to vote as the officer or employee pleases and to express freely political opinions. (Emphasis added.)

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."[3] *Accord* 2001 Op. Att'y Gen. No. 2001-034 at 2-203; *see* 2 Ohio Admin. Code 123:1-46-02(C).

We must first determine whether a member of a board of education of an exempted village school district or village clerk-treasurer is an officer or employee that is subject to R.C. 124.57's prohibition. R.C. 124.57 regulates the partisan political activities of officers and employees of "the state, the several counties, cities, and city school districts of the state, [and] the civil service townships of the state." It does not apply to officers or employees of exempted village school districts or villages. *See* 2002 Op. Att'y Gen. No. 2002-021 at 2-133; *cf.* 2000 Op. Att'y Gen. No. 2000-025 at 2-167 (R.C. 124.57 does not apply to officers and employees of a park district created under R.C. Chapter 1545 since R.C. 124.57 does not explicitly refer to such officers and employees). *See generally Fort Hamilton-Hughes Mem'l Hosp. Center v. Southard*, 12 Ohio St. 3d 263, 265, 466 N.E.2d 903 (1984) ("[i]t is a basic doctrine of [statutory] construction that the express enumeration of specific classes of persons in a statute implies that the legislature intended to exclude all others"). Accordingly, R.C. 124.57's prohibition does not apply to the positions of member of a board of education of an exempted village school district or village clerk-treasurer, and, as such, does not operate to prevent a person from serving in both of these positions simultaneously.

Statutes Prohibiting the Holding of Another Public Position

The second question asks whether the empowering statutes of either position limit a person from being employed in another public position or holding another public office. Also, in some situations, a provision in the Ohio Constitution may prohibit a person from serving in two public positions simultaneously.

No constitutional provision or statute prohibits a person from serving simultaneously as a member of a board of education of an exempted village school district and village clerk-treasurer.[4] *Cf.* R.C. 3313.13 ("[e]xcept as otherwise provided in this section, no prosecuting

---

[3] A municipal charter provision or the terms of a collective bargaining agreement may permit an officer or employee in the classified service to participate in partisan politics. *See* 2003 Op. Att'y Gen. No. 2003-041 at 2-336 n.7; 1991 Op. Att'y Gen. No. 91-065 (syllabus, paragraph one).

[4] The positions of village clerk-treasurer and member of the board of education of an exempted village school district are filled by election. *See* R.C. 733.261; R.C. 3313.01. Elections for these positions are held in odd-numbered years. Ohio Const. art. XVII, § 1; R.C. 3501.02(D). It is thus possible that a person may compete for these two positions during the same election.

attorney, city director of law, or other official acting in a similar capacity shall be a member of a board of education"); R.C. 3313.70 ("[n]o member of the board of education in any district shall be eligible to the appointment of school physician, school dentist, or school nurse during the period for which the member is elected or appointed"). The second question thus may be 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. Members of a board of education of an exempted village school district are elected by, and accountable to, the citizens of the school district. *See* R.C. 3313.01. A village clerk-treasurer is an elected village official, *see* R.C. 733.261, and, as such, is accountable to the village's electorate. The positions thus serve different constituencies and are not subordinate to each other. Moreover, 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.[5]

R.C. 3513.052(A), however, prohibits a person from being a candidate in the same election for the office of member of the board of education of an exempted village school district and village clerk-treasurer:

> No person shall seek nomination or election to any of the following offices or positions at the same election by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, or by becoming a candidate through party nomination in a primary election, or by the filling of a vacancy under [R.C. 3513.30 or R.C. 3513.31]:
>
> ….
>
> (4) Any combination of two or more *municipal* or township *offices*, *positions as a member of a* city, local, or *exempted village board of education*, or positions as a member of a governing board of an educational service center. (Emphasis added.)

Although this statute prohibits a person from being a candidate in the same election for the positions of village clerk-treasurer and member of the board of education of an exempted village school district, the statute does not prohibit a person from holding these two positions simultaneously.

[5] A person who is elected to the position of village clerk-treasurer serves as, and performs the duties of, the village clerk and village treasurer. R.C. 733.261. *See generally* R.C. 733.26 (creating the office of village clerk); R.C. 733.42 (establishing the office of village treasurer).

Physical Ability to Hold and Serve in Both Positions

The fourth question of the 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 resolved by the interested persons at the local level because they may more precisely determine the time constraints imposed upon the person as a village clerk-treasurer and as a member of the board of

---

Except as provided in R.C. 733.261, all laws pertaining to the village clerk and village treasurer are to be construed to apply to the village clerk-treasurer. R.C. 733.261(C).

An opinion of a prior Attorney General dated November 19, 1904, and appearing in 1903-1907 Annual Report of the Attorney General, p. 143 advised that the duties of a village treasurer and member of the board of education of a village school district render these two positions incompatible. 1914 Op. Att'y Gen. No. 862, vol. I, p. 462 modified the foregoing opinion by advising that these two positions are compatible unless the village treasurer qualifies and serves as the school district's treasurer. These opinions reasoned that, insofar as G.C. 4763 and its predecessor R.S. 4042 required a village treasurer to serve as the treasurer of the village school district's funds, the position of village treasurer is subordinate to, and thus incompatible with, the position of member of the board of education of a village school district. *See* 1904 Ohio Laws 334, 367 (S.B. 57, approved Apr. 25, 1904) (enacting R.S. 4042, which was recodified as G.C. 4763 pursuant to S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of the State of Ohio, Commissioners of Public Printing 1910)).

Pursuant to statutory amendment, the duties of a village treasurer no longer include serving as the treasurer of a village school district. *See* 1921 Ohio Laws 552 (H.B. 180, approved June 7, 1921) (amending G.C. 4763 so as to make the county treasurer the treasurer of exempted village, village, and rural school districts); *see also* 1908 Ohio Laws 205, 206 (H.B. 830, approved Apr. 27, 1908) (enacting R.S. 4042a, which was recodified as G.C. 4782 through G.C. 4784 pursuant to S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of the State of Ohio, Commissioners of Public Printing 1910), so as to authorize a board of education in certain instances to "dispense with a treasurer" and impose the duties of treasurer upon the clerk of a board of education). *See generally* 1939 Ohio Laws 390 (H.B. 415, approved May 17, 1939) (amending G.C. 4768 (now R.C. 3313.51, *see* 1943-1944 Ohio Laws 475, 536 (H.B. 217, approved June 15, 1943); 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953)) so as to require the clerk of a board of education (now treasurer, 1977-1978 Ohio Laws, Part II, 3966, 3973 (Am. H.B. 1285, eff. June 30, 1978); 1979-1980 Ohio Laws, Part I, p. 1342, 1385 (Sub. H.B. 1, eff. July 1, 1979, with certain sections effective on other dates)) to "be the treasurer of the school funds"). Accordingly, 1903-1907 Annual Report of the Attorney General, p. 143 is hereby overruled. In addition, 1914 Op. Att'y Gen. No. 862, vol. I, p. 462 is clarified to the extent that it advised that the positions of village treasurer and member of a board of education of a village school district are incompatible when the village treasurer qualifies and serves as the school district's treasurer.

education of an exempted village school district. *See* 2003 Op. Att'y Gen. No. 2003-041 at 2-339.

However, in order to serve simultaneously in these two positions the person must be certain that she will be able to carry out the duties of both positions in a competent and timely manner. *Id.* 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 village and the school district. *Id.*

Conflicts of Interest

The final question asks whether there is a conflict of interest between the two positions.[6] It is well settled that a person may not hold two public positions simultaneously if she 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 she serves. *Id.* at 2-339 and 2-340.

We must first review the powers, duties, and responsibilities conferred upon a village clerk-treasurer and a member of a board of education of an exempted village school district to determine whether a person who holds both of these positions is subject to conflicts of interest in either or both positions. If this review discloses conflicts, we must then 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. Factors used to make this determination include the probability of the conflicts, the ability of the person to remove herself from the conflicts (should they arise), whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters. *Id.* at 2-340.

We will consider, first, the powers, duties, and responsibilities of a member of a board of education of an exempted village school district. A board of education of an exempted village school district is the governing body of the school district. *See generally Cline v. Martin,* 94 Ohio St. 420, 426, 115 N.E. 37 (1916) (boards of education "are agencies of the state for the organization, administration and control of the public school system of the state"). As such, the board is "capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust

---

[6] The authority 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 is conferred upon the Ohio Ethics Commission pursuant to R.C. 102.08. In light of this specific statutory grant of authority, the Attorney General 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). Hence, questions about the interpretation and application of these provisions in the situation in which a person serves simultaneously as a village clerk-treasurer and member of a board of education of an exempted village school district should be addressed to the Ohio Ethics Commission.

… any grant or devise of land and any donation or bequest of money or other personal property" on behalf of the school district. R.C. 3313.17. The responsibilities of the board also include, *inter alia*, the establishment of rules for the government of the district's employees, students of the district, and all other persons entering upon the district's school grounds or premises, R.C. 3313.20; procuring liability insurance against damage or injury to persons and property, R.C. 3313.201; providing insurance and other fringe benefits to the district's employees, R.C. 3313.202; managing and controlling the district's schools, R.C. 3313.47; and providing a free education to the youths of the district, R.C. 3313.48.

In addition, the board of education of an exempted village school district manages the district's moneys and handles other fiscal matters on behalf of the school district. *See, e.g.*, R.C. 135.04(C) (awards the school district's active deposits of public moneys to an eligible institution); R.C. 135.14 (invests the school district's interim moneys); R.C. 3313.19 (compounds or releases debts, obligations, judgments, or claims due the school district). As the taxing authority of the school district for purposes of R.C. Chapters 133 (uniform public securities law) and 5705 (tax levy law), R.C. 133.01(NN)(3); R.C. 5705.01(C), the board issues securities for the purpose of providing funds with which to pay one or more final judgments rendered against the school district, R.C. 133.14, issues securities for the purpose of paying all or any portion of the costs of any permanent improvement that the school district is authorized to acquire, improve, or construct, R.C. 133.15, prepares the school district's annual tax budget, R.C. 5705.28, and levies taxes, R.C. 133.56; R.C. 5705.03; R.C. 5705.194; R.C. 5705.21; R.C. 5705.212; R.C. 5705.213.

We will now look to the powers, duties, and responsibilities conferred upon a village clerk-treasurer. R.C. 733.261(A) permits the legislative authority of a village to "combine the duties of the clerk and the treasurer into one office, to be known as the clerk-treasurer."[7] *See generally* R.C. 733.26 (providing for the election of a village clerk); R.C. 733.42 (providing for the election of a village treasurer). The duties of a village clerk-treasurer include notifying the board of elections of vacancies in village offices and of village boundary changes, R.C. 709.011, certifying to the court of common pleas the election of certain officers, R.C. 733.15, recording the proceedings of, and all the rules, bylaws, resolutions, and ordinances passed or adopted by, the village's legislative authority, R.C. 733.27, serving on the village's board of trustees of the sinking fund, R.C. 739.02, and recording a plat of all grounds for cemetery purposes, R.C. 759.44. The clerk-treasurer may also be required to serve as the clerk for the village's board of trustees of public affairs, board of park trustees, and board of hospital trustees. *See* R.C. 733.28; R.C. 749.23; R.C. 755.24.

The village clerk-treasurer serves as the village's fiscal officer. *See* R.C. 133.01(L)(2); R.C. 5705.01(D). In this capacity, the clerk-treasurer certifies to the legislative authority the

---

[7] R.C. 733.262(A) also authorizes a village's legislative authority to "combine the duties of the clerk and treasurer into one appointed office, to be known as the village fiscal officer."

estimate of the maximum maturity of bonds for permanent improvements, R.C. 133.19, signs R.C. Chapter 133 securities issued on behalf of the village, R.C. 133.27(A)(1), and certifies that the amount of money required to be paid by the village under a contract or order has been lawfully appropriated and is in the treasury or in the process of collection, R.C. 5705.41. The clerk-treasurer is also responsible for auditing the accounts of all village officers and departments, R.C. 733.12, countersigning all orders for the payment of village moneys, R.C. 733.14, keeping a record of all of the village's property and the moneys received and expended by the village, R.C. 733.28, receiving and disbursing village moneys and keeping an account of those moneys, R.C. 733.43-.46, and receiving tax proceeds, R.C. 733.44; R.C. 5705.03.

A review of the duties and responsibilities of a village clerk-treasurer and member of the board of education of an exempted village school district discloses potential conflicts of interest between these two positions. First, a potential conflict exists because of competition over tax moneys generated within the ten-mill limitation.[8] Except as provided in R.C. 5705.28(B) or R.C. 5705.281,[9] the legislative authority of a village and the board of education of an exempted village school district, as taxing authorities, R.C. 5705.01(C), are required to prepare, adopt, and submit annual tax budgets to the county budget commission. R.C. 5705.28(A); *see also* R.C. 5705.29-.32. *See generally* R.C. 5705.01(A) (defining both a village and exempted village school district as a "subdivision" for purposes of R.C. Chapter 5705 (tax levy law)).

After the annual tax budgets are submitted, the commission revises and adjusts the estimate of balances and receipts from all sources for each fund within the village's and exempted village school district's tax budgets. R.C. 5705.31-.32. Also, if it is necessary, the commission adjusts the levies of the village and school district within the limits of the law. *Id*. Because revisions and adjustments made by the commission affect the amount of tax money generated within the ten-mill limitation that will be allocated to the village and school district, both are permitted to have representatives appear before the commission to explain their financial needs. R.C. 5705.32(E).

---

[8] The "ten-mill limitation" is established by Ohio Const. art. XII, § 2, which 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. 2001 Op. Att'y Gen. No. 2001-019 at 2-107 n.1; 1999 Op. Att'y Gen. No. 99-015 at 2-115 n.2; *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.

[9] R.C. 5705.28(B)(2)(a) states 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)]." Pursuant to R.C. 5705.281, the county budget commission may waive the requirement that the taxing authority of a subdivision adopt a tax budget in accordance with R.C. 5705.28(A).

Thus, under R.C. Chapter 5705, members of the board of education of an exempted village school district are required to participate in the preparation and adoption of the school district's annual tax budget, R.C. 5705.28(A), and may appear before the county budget commission to explain the district's budget and financial needs, R.C. 5705.32(E). A village clerk-treasurer, as the village's fiscal officer, R.C. 5705.01(D), may assist in preparing the village's annual tax budget and explaining it and the village's financial needs to the county budget commission. *See* 2002 Op. Att'y Gen. No. 2002-021 at 2-137; 1996 Op. Att'y Gen. No. 96-008 at 2-33. Accordingly, if a person were to assist in the preparation and presentation of both the school district's and village's annual tax budget to the commission, that person might be subject to influences that could prevent her from making completely objective, disinterested decisions. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35; 2002 Op. Att'y Gen. No. 2002-021 at 2-137; 1998 Op. Att'y Gen. No. 98-017 at 2-88; *see also* 1958 Op. Att'y Gen. No. 1962, p. 215, at 217-18 (in the preparation of the annual tax budget it may well occur that any proposed modifications or reductions with respect to one subdivision's budget could be detrimental to another subdivision's budget, "and where the same person participates in the preparation of two such budgets there may be a conscious or unconscious bias or prejudice on his part").

An additional budgetary conflict may also exist because of competition for additional moneys in excess of the ten-mill limitation. As taxing authorities for partially coextensive subdivisions, *see* R.C. 133.01(NN)(2), (3); R.C. 5705.01(C), the village legislative authority and board of education are permitted to place levies on the ballot for taxes in excess of the ten-mill limitation, R.C. 5705.07; *see, e.g.,* R.C. 5705.19; R.C. 5705.191; R.C. 5705.21, and to submit to the electors bond issues, *see* R.C. Chapter 133. Where both the village and exempted village school district contemplate asking the voters for a tax levy or bond issue for additional funding, the person as a member of the board of education of the school district might find herself subject to divided loyalties. *See* 1998 Op. Att'y Gen. No. 98-017 at 2-88; 1988 Op. Att'y Gen. No. 88-011 at 2-43. For example, if the village has authorized a tax levy for additional operating funds, *see* R.C. 5705.07; R.C. 5705.19, the person as a member of the board of education might be apprehensive about placing a school levy on the ballot for fear that the village levy may be rejected in favor of the school levy. *See* 1998 Op. Att'y Gen. No. 98-017 at 2-88; 1988 Op. Att'y Gen. No. 88-011 at 2-43. "Questions of competing concerns before the electorate may be critical to determining whether or when a board might consider bringing requests for additional taxes before the voters." 1988 Op. Att'y Gen. No. 88-011 at 2-43.

We believe, however, that these budgetary conflicts of interest can be sufficiently avoided. A village clerk-treasurer is not required by statute to prepare the village's annual tax budget or present it to the county budget commission. 2002 Op. Att'y Gen. No. 2002-021 at 2-137. Nor is a clerk-treasurer required to determine whether or when to place a village tax levy or bond issue on the ballot. For purposes of R.C. Chapters 133 and 5705, the village's legislative authority, as the village's taxing authority, R.C. 133.01(NN)(2); R.C. 5705.01(C), has these responsibilities. *See, e.g.,* R.C. 133.18; R.C. 5705.07; R.C. 5705.19. The foregoing conflicts thus do not involve the primary functions of, or require the exercise of decision-making authority by, a village clerk-treasurer. A village clerk-treasurer, therefore, is not subject to impermissible conflicts involving competing annual tax budgets when she also serves as a member of a board

of education of an exempted village school district, so long as she does not participate in the preparation of the village's annual tax budget or present the village's annual tax budget to the county budget commission. *See generally* 2003 Op. Att'y Gen. No. 2003-006 at 2-36 ("conflicts of interest arising because of the competition over tax moneys generated within the ten-mill limitation … do not exist and do not render the positions of county commissioner and township clerk incompatible, unless the person, as township clerk, is required to prepare and present the township's annual tax budget to the county budget commission"); 1998 Op. Att'y Gen. No. 98-017 at 2-90 ("a person who serves as a village mayor and member of a board of education of an exempted village school district is not a member of two governmental bodies that have their tax budgets reviewed by the county budget commission or that compete for tax moneys").

In addition, the fact that a member of the board of education of an exempted village school district holds an elected office with a village that competes with the school district for tax moneys generated within the ten-mill limitation and additional moneys in excess of the ten-mill limitation is, in and of itself, an insufficient reason to find that the board member is subject to an impermissible conflict of interest. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35; 2000 Op. Att'y Gen. No. 2000-025 at 2-172. If this reason were deemed sufficient, a board member would not be permitted to hold any office or employment with a political subdivision that competes with the school district for tax moneys generated within the ten-mill limitation and additional moneys in excess of the ten-mill limitation. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35; 2000 Op. Att'y Gen. No. 2000-025 at 2-172.

Moreover, when the board of education considers placing a levy on the ballot for taxes in excess of the ten-mill limitation or submitting to the electors a bond issue after the village has authorized a tax levy or bond issue for additional funding, the board member who is an elected village officer is able to remove herself from any deliberations, discussions, or votes on the tax levy or bond issue because the board is capable of functioning and performing its statutory duties when one of its members abstains from a matter. *See generally State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d 47, 48, 212 N.E.2d 604 (1965) ("[i]n the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur"). It is significant to note that it is well established that, in a matter in which a public officer is exposed to influences that may prevent her from making completely objective and disinterested decisions, the officer should refrain from participating in the matter. 1994 Op. Att'y Gen. No. 94-079 at 2-394. Thus, the member of the board of education, as a public officer, *Schwing v. McClure*, 120 Ohio St. 335, 166 N.E. 230 (1929), should abstain from participating in deliberations, discussions, or votes on a tax levy or bond issue for additional funding when the village in which she serves as clerk-treasurer has already placed such a levy or bond issue on the ballot.

Finally, while the village and school district each prepare and submit a tentative tax budget, it is the county budget commission that actually allocates to the village and school district tax proceeds within the ten-mill limitation. R.C. 5705.31-.32. Accordingly, the foregoing budgetary conflicts of interest are avoided when the person, as village clerk-treasurer, does not participate in the preparation of the village's annual tax budget or the presentation of

that budget to the county budget commission and when the person, as a member of the board of education, does not participate in deliberations, discussions, or votes on a tax levy or bond issue for additional funding that occur after the village has placed such a levy or bond issue on the ballot.

Conflicts of interest may also arise because a member of the board of education may be required to deliberate, discuss, negotiate, or vote on a contract between the board and village.[10] *See, e.g.,* R.C. 721.02 (a village may convey real property to a board of education); R.C. 721.24 (a board of education may acquire or lease real property from a village for school farms); R.C. 725.02 (a village and school district may enter into an agreement to provide compensation to the school district when the village grants exemptions from real property taxation); R.C. 755.16 (a village and school district may enter into an agreement to jointly acquire and maintain parks or other recreation facilities); R.C. 3313.95 (a board of education and village legislative authority may enter into a contract under which the village provides police services in alcohol and drug programs operated by the school district). Also, conflicts may occur because a member of the board of education may be required to deliberate, discuss, negotiate, or vote on a tax exemption granted by the village. *See, e.g.,* R.C. 725.02; R.C. 3735.671; R.C. 5709.40; R.C. 5709.41; R.C. 5709.62; *see also* R.C. 5709.83. If a member of a board of education who serves as a village

---

[10] R.C. 3313.33 provides, in part, that, "no member of the board [of education] shall have, directly or indirectly, any pecuniary interest in any contract of the board." It might be argued that a member of the board of education of an exempted village school district serving as a village clerk-treasurer has a prohibited pecuniary interest in a contract between the board and village when, *inter alia,* the board agrees to pay the village for services or property. *See* 1999 Op. Att'y Gen. No. 99-023 (a school board member employed by an educational service center would have a pecuniary interest in the board's contract with the center). However, R.C. 3313.33 was recently amended to permit a member of a board of education to have a pecuniary interest in a contract of the board when all of the following apply:

> (1) The member's pecuniary interest in that contract is that the member is employed by a political subdivision, instrumentality, or agency of the state that is contracting with the board;
>
> (2) The member does not participate in any discussion or debate regarding the contract or vote on the contract;
>
> (3) The member files with the school district treasurer an affidavit stating the member's exact employment status with the political subdivision, instrumentality, or agency contracting with the board.

Am. Sub. S.B. 2, 125th Gen. A. (2004) (eff. June 9, 2004, with certain sections effective on other dates). Accordingly, a member of the board of education may have a pecuniary interest in a contract between the board and village when such interest is one described in R.C. 3313.33(C)(1)-(3).

clerk-treasurer were required to deliberate, discuss, negotiate, or vote on a contract between the board and village or a tax exemption granted by the village, it might be difficult for the board member to perform her duties and exercise her discretion in a completely objective and disinterested manner because of her service as a village officer. *See* 1998 Op. Att'y Gen. No. 98-017 at 2-87. *See generally* 1980 Op. Att'y Gen. No. 80-035 at 2-149 (a conflict of interest occurs when a person'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").

We believe, however, that this potential conflict of interest can also be sufficiently avoided. No statute requires the board of education and village to contract with each other for services, property, or any other reason. Also, deliberations, discussions, negotiations, and votes on contracts between the board of education and village and tax exemptions granted by the village are not matters that regularly come before the board of education. Thus, the occasions in which the person, as a member of the board of education, will have to deliberate, discuss, negotiate, or vote on a contract between the board and village or a tax exemption granted by the village will be infrequent.

Moreover, as explained above, when a member of a board of education is exposed to influences that may prevent her from making completely objective and disinterested decisions, the board member must refrain from participating in the matter. *See generally* R.C. 3313.33(C) (a member of a board of education who is employed by another political subdivision may have a pecuniary interest in a contract between the board and the political subdivision, provided, *inter alia*, "[t]he member does not participate in any discussion or debate regarding the contract or vote on the contract"). Accordingly, the foregoing conflict of interest is avoided when the person, as a member of the board of education, does not participate in deliberations, discussions, negotiations, or votes on a contract between the board and village or a tax exemption granted by the village.

As a final matter, if the village and school district enter into a contract that requires the village to pay the school district for a service or property, the village clerk-treasurer, as the village's fiscal officer, R.C. 5705.01(D), would be required to certify that the amount of money payable under the contract has been lawfully appropriated and is in the treasury or in the process of collection, R.C. 5705.41, and to disburse village moneys payable under the contract, R.C. 733.14; R.C. 733.43-.46. In such a situation, the village clerk-treasurer's responsibilities as a member of the board of education could influence the performance of her duties as clerk-treasurer, thereby subjecting her to a conflict of interest. *See* 2002 Op. Att'y Gen. No. 2002-021 at 2-138; 1996 Op. Att'y Gen. No. 96-008 at 2-33.

Although the village clerk-treasurer cannot avoid this conflict of interest, our recent opinions have advised that this conflict is insufficient to summarily render two public positions incompatible. 2003 Op. Att'y Gen. No. 2003-006 at 2-39; 2002 Op. Att'y Gen. No. 2002-021 at 2-138; 1999 Op. Att'y Gen. No. 99-018 at 2-133; 1996 Op. Att'y Gen. No. 96-008 at 2-33 and 2-34. These opinions explain that, when a village clerk-treasurer or township clerk certifies the

availability of money payable under a public contract or disburses public moneys payable under a contract, the clerk-treasurer or clerk performs a ministerial duty, or one that involves obedience to instructions or laws instead of discretion, judgment, or skill. 2003 Op. Att'y Gen. No. 2003-006 at 2-39 and 2-40; 2002 Op. Att'y Gen. No. 2002-021 at 2-138; 1999 Op. Att'y Gen. No. 99-018 at 2-133; 1996 Op. Att'y Gen. No. 96-008 at 2-34. Accordingly, when a village clerk-treasurer certifies the availability of money payable under a contract between the village and school district or disburses moneys payable under the contract, the clerk-treasurer exercises no decision-making authority.

Furthermore, there is a presumption that, in the absence of evidence to the contrary, a village clerk-treasurer will perform her ministerial duties in a regular and lawful manner. 2002 Op. Att'y Gen. No. 2002-021 at 2-139; *see* 2003 Op. Att'y Gen. No. 2003-006 at 2-40; *see also State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph ten) ("[i]n the absence of evidence to the contrary, public officials, administrative officers, and public authorities, within the limits of the jurisdiction conferred upon them by law, will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully"); 1983 Op. Att'y Gen. No. 83-037 at 2-141 ("I realize that there exists the potential for abuse in a situation such as you describe. However, this office must assume, in the absence of evidence to the contrary, that all parties are acting in good faith, and in accordance with the law"). It is thus reasonable to presume, in the absence of evidence to the contrary, that, when the village and school district enter into a contract that requires the village to pay the school district for a service or property, the village clerk-treasurer will discharge her ministerial duties of certifying the availability of money payable under the contract and disbursing village moneys payable to the school district under the contract in a regular and lawful manner.[11]

Accordingly, we conclude that the potential conflicts of interest identified herein do not prohibit a person from serving simultaneously as a member of the board of education of an exempted village school district and clerk-treasurer of a noncharter village located within the territory of the school district, provided that as a board member she does not participate in any deliberations, discussions, negotiations, or votes concerning contracts with the village, tax

---

[11] The syllabus of 1916 Op. Att'y Gen. No. 1237, vol. I, p. 205 stated that, "[t]he duties of the offices of member of village board of education and clerk of the village council are not incompatible, and both positions may be held contemporaneously by one person." Similarly, 1914 Op. Att'y Gen. No. 862, vol. I, p. 462 advised in its syllabus that, except when a village treasurer serves as the treasurer of a village board of education, *see* note five, *supra*, "[t]here is no incompatibility between the office of village treasurer and that of member of the board of education." Insofar as we have determined that there are instances in which a person who serves in the positions of member of the board of education of an exempted village school district and village clerk-treasurer is subject to impermissible conflicts of interest, the 1916 and 1914 opinions are hereby clarified to the extent that they conclude otherwise.

exemptions granted by the village, or tax levies or bond issues for additional funding when the village has placed such a levy or bond issue on the ballot. As village clerk-treasurer, she may not prepare or present the village's tax budget to the county budget commission. *Cf.* 1961 Op. Att'y Gen. No. 2480, p. 532 (syllabus) ("[t]he office of township clerk … is not incompatible with the office of member of the board of education for the local school district in which the township is located; and one person may serve in both capacities").

Conclusion

In conclusion, it is my opinion, and you are hereby advised that a person may serve simultaneously as a member of the board of education of an exempted village school district and clerk-treasurer of a noncharter village located within the territory of the school district, provided that as a board member she does not participate in any deliberations, discussions, negotiations, or votes concerning contracts with the village, tax exemptions granted by the village, or tax levies or bond issues for additional funding when the village has placed such a levy or bond issue on the ballot. As village clerk-treasurer, she may not prepare or present the village's tax budget to the county budget commission. (1916 Op. Att'y Gen. No. 1237, vol. I, p. 205 and 1914 Op. Att'y Gen. No. 862, vol. I, p. 462, clarified; 1903-1907 Annual Report of the Attorney General, p. 143, overruled on the basis of statutory amendment.)

Respectfully,

JIM PETRO
Attorney General