July 21, 2008

The Honorable Robin N. Piper
Butler County Prosecuting Attorney
Government Services Center, 11th Floor
P.O. Box 515
315 High Street
Hamilton, Ohio 45012-0515

SYLLABUS: 2008-024

The positions of member of the board of education of a local school district and township administrator within the same county are incompatible.

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OPINION NO. 2008-024

The Honorable Robin N. Piper
Butler County Prosecuting Attorney
Government Services Center, 11th Floor
P.O. Box 515
315 High Street
Hamilton, Ohio 45012-0515

Dear Prosecutor Piper:

You have requested an opinion whether the positions of member of the board of education of a local school district and township administrator within the same county[1] are compatible. Because of an impermissible conflict of interest between the two positions, the positions are incompatible.

Conflict of Interest Rule

It is a well-established principle that two public positions are incompatible when there is an impermissible conflict of interest between the two positions. 2003 Op. Att'y Gen. No. 2003-010 at 2-70; 2002 Op. Att'y Gen. No. 2002-039 at 2-249; 2002 Op. Att'y Gen. No. 2002-012 at 2-66. An impermissible conflict of interest exists between two public positions when a person who holds both positions at the same time is subject to divided loyalties, conflicting duties, or the temptation to act other than in the public's best interest in either or both positions. 2006 Op. Att'y Gen. No. 2006-034 at 2-309; 2003 Op. Att'y Gen. No. 2003-010 at 2-70.

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[1] A member of your staff has informed us that the territory of the local school district does not extend outside of Butler County. This opinion therefore does not consider a situation in which the local school district encompasses territory in two counties.

Whether an impermissible conflict of interest exists between the positions of member of the board of education of a local school district and township administrator is determined by first reviewing the powers, duties, and responsibilities of the positions. This review will enable us to evaluate whether there are any conflicts of interest between the positions when a person exercises the powers, duties, and responsibilities of both positions at the same time. *See* 2006 Op. Att'y Gen. No. 2006-034 at 2-309. If the review discloses any conflicts of interest, the immediacy of the conflicts must next be examined so as to determine whether the conflicts may be eliminated entirely or avoided sufficiently. *Id*. The pertinent factors used in making this determination include, but are not limited to, the probability of the conflicts, the ability of the person to remove himself from the conflicts (should the conflicts arise), whether the person exercises decision-making authority in the positions, and whether the conflicts relate to the primary functions of the positions, or to financial or budgetary matters. *Id.* If the conflicts of interest can not be eliminated entirely or avoided sufficiently, a person may not serve simultaneously in both positions. *See, e.g.,* 2003 Op. Att'y Gen. No. 2003-010; 2002 Op. Att'y Gen. No. 2002-039.

Powers, Duties, and Responsibilities of a Member of the Board of Education of a Local School District and Township Administrator

We will first consider the powers, duties, and responsibilities of a member of the board of education of a local school district. The board of education of a local school district is the governing body of the district, *see* R.C. 3313.17, and, as such, the board is responsible for establishing rules for the government of the district, R.C. 3313.20, providing for the free education of youths of the district at the most convenient places for the attendance of the largest number of youths, R.C. 3313.48, managing and controlling the public schools located within the district, R.C. 3313.47, and serving as the district's taxing authority, R.C. 133.01(NN)(3); R.C. 5705.01(C). In discharging these duties and responsibilities, a board of education of a local school district may, among other things, enter into contracts on behalf of the district, R.C. 3313.17, acquire, hold, possess, and dispose of real and personal property for the district, R.C. 3313.17; R.C. 3313.37; R.C. 3313.39; R.C. 3313.40; R.C. 3313.41, employ superintendents, teachers, and other necessary employees, R.C. 3313.47; R.C. 3319.01; R.C. 3319.07, issue securities for the purpose of providing funds with which to pay one or more final judgments rendered against the district, R.C. 133.14, issue securities for the purpose of paying all or any portion of the costs of any permanent improvement that the district is authorized to acquire, improve, or construct, R.C. 133.15, prepare the district's annual tax budget, R.C. 5705.28, and levy taxes and assessments on real property within the district, R.C. 133.56; R.C. 5705.03; R.C. 5705.07; R.C. 5705.194; R.C. 5705.21; R.C. 5705.212; R.C. 5705.213.

We will now turn to the powers, duties, and responsibilities of a township administrator. Under R.C. 505.031, a township administrator is appointed by the board of township trustees to serve as the administrative head of the township. The powers, duties, and responsibilities of a township administrator are prescribed by statute as follows:

> The township administrator shall, under the direction of the board of township trustees:
>
> (A) Assist in the administration, enforcement and execution of the policies and resolutions of the board;
>
> (B) Supervise and direct the activities of the affairs of the divisions of township government under the control or jurisdiction of the board;
>
> (C) Attend all meetings of the board at which his attendance is required by that body;
>
> (D) Recommend measures for adoption to the board;
>
> (E) Prepare and submit to the board such reports as are required by that body, or as he considers advisable;
>
> (F) Keep the board fully advised on the financial conditions of the township, preparing and submitting a budget for the next fiscal year;
>
> (G) Perform such additional duties as the board may determine by resolution.
>
> The board of township trustees may assign to such township administrator any office, position, or duties under its control; such office, position, and duties to be performed under the direction and supervision of the board and to be in addition to those set forth in this section.

R.C. 505.032.

Impermissible Conflict of Interest Between the Positions of Member of the Board of Education of a Local School District and Township Administrator

A review of the powers, duties, and responsibilities of the positions of member of the board of education of a local school district and township administrator within the same county discloses an impermissible conflict of interest between the positions. An impermissible conflict of interest occurs because of competition between the local school district and township for tax moneys generated within the ten-mill limitation.[2]

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[2] The ten-mill limitation is established by Article XII, § 2 of the Ohio Constitution and R.C. 5705.02. Article XII, § 2 of the Ohio Constitution provides, in part: "No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value," except that laws may be passed to reduce taxes for certain homesteads on the basis of age or disability. R.C. 5705.02 states that "[t]he aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills

Except as provided in R.C. 5705.28(B) and R.C. 5705.281,[3] the taxing authority of a local school district, township, or other subdivision 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. *See generally* R.C. 5705.01(A) (for purposes of R.C. Chapter 5705, a local school district and township are "subdivision[s]"). The county budget commission reviews all the tax budgets submitted to it and revises and adjusts the estimate of balances and receipts from all sources for funds within those tax budgets and adjusts tax levies within the ten-mill limitation. R.C. 5705.31; R.C. 5705.32. Because revisions and adjustments made by the county budget commission may affect the amount of tax moneys generated within the ten-mill limitation that will be allotted to a local school district or township, each is permitted to have a representative appear before the commission to explain its financial needs. R.C. 5705.32(E)(2). The manner by which tax moneys generated within the ten-mill limitation are allotted, therefore, creates competition between the local school district and township for those tax moneys. *See* 1985 Op. Att'y Gen. No. 85-006 at 2-16 and 2-17; 1966 Op. Att'y Gen. No. 66-060 at 2-99 and 2-100; 1958 Op. Att'y Gen. No. 2202, p. 361, at 363; 1949 Op. Att'y Gen. No. 951, p. 598, at 600; 1927 Op. Att'y Gen. No. 2, vol. I, p. 5, at 5; 1910-1911 Annual Report of the Att'y Gen., p. 909, at 909.

A member of the board of education of a local school district and a township administrator are statutorily required to participate in the preparation and adoption of a budget that is submitted to the county budget commission. *See* R.C. 505.032(F) (a township administrator is required to prepare the township's budget); R.C. 5705.01(C) (the board of education of a local school district is the district's "taxing authority" for purposes of R.C. Chapter 5705); R.C. 5705.28(A) (the taxing authority of a subdivision prepares the subdivision's budget). A person serving in both positions thus is required to participate in the preparation of competing budgets, and, as such, could be subject to influences that may prevent him from making completely objective and disinterested decisions. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35; 1999 Op. Att'y Gen. No. 99-043 at 2-264; 1999 Op. Att'y Gen. No. 99-027 at 2-182.

Also, a member of the board of education of a local school district or a township administrator may appear before the county budget commission to explain to the commission the financial needs of the local school district or township, respectively. R.C. 5705.32(E)(2). *See generally* R.C. 505.032(G) (a township administrator shall "[p]erform such additional duties as

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on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof."

[3] Under R.C. 5705.28(B)(2)(a), "[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)]." The county budget commission is authorized by R.C. 5705.281 to waive the requirement that the taxing authority of a subdivision or taxing unit adopt a tax budget pursuant to R.C. 5705.28(A).

the board [of township trustees] may determine by resolution"). If the same person were to appear before the county budget commission on behalf of a local school district and township to request additional funding, that person might be subject to influences that could prevent him from effectively advocating the interests of either the local school district or the township. *See* 2003 Op. Att'y Gen. No. 2003-006 at 2-35; 1999 Op. Att'y Gen. No. 99-043 at 2-264; 1999 Op. Att'y Gen. No. 99-027 at 2-182.

Insofar as our review of the positions of member of the board of education of a local school district and township administrator has revealed a conflict of interest between the two positions, we must now consider the immediacy of the conflict. If the conflict of interest may be eliminated or avoided, the conflict will not render the two positions incompatible. *See, e.g.,* 2003 Op. Att'y Gen. No. 2003-006; 1999 Op. Att'y Gen. No. 99-027.

The immediacy of the conflict of interest resulting from competition over tax moneys generated within the ten-mill limitation when a person serves simultaneously as a member of the board of education of a local school district and township administrator indicates that the person can neither eliminate nor avoid the conflict. A member of the board of education of a local school district and a township administrator are statutorily required to prepare annually the local school district's and township's budgets, respectively, and handle other fiscal matters. *See* R.C. 133.14; R.C. 133.15; R.C. 133.56; R.C. 505.031; R.C. 505.032; R.C. 5705.01(A), (C); R.C. 5705.03; R.C. 5705.07; R.C. 5705.28(A). The handling of budgetary and fiscal matters also require the exercise of decision-making authority in each position with respect to such matters. The conflict of interest thus relates to a primary, statutory function of each position that occurs regularly and relates to the exercise of discretion in financial and budgetary matters.

Moreover, a person who serves as a member of the board of education of a local school district and a township administrator at the same time is unable to remove himself from the conflict of interest in either position.[4] Under R.C. 505.032, a township administrator is charged

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[4] Prior opinions of the Attorneys General have indicated that a person who holds two public positions with governmental entities that are in competition for tax moneys generated within the ten-mill limitation is not subject to an impermissible conflict of interest when the person does not participate in the preparation of competing tax budgets or represent both entities before the county budget commission. *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

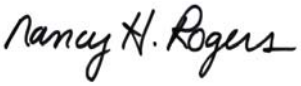
with the responsibility of preparing the township's budget and may not decline to appear before the county budget commission on behalf of the township to request additional funding when the board of township trustees requires him to do so. *See generally* 2003 Op. Att'y Gen. No. 2003-006 at 2-36 ("[a] person who serves simultaneously as a county commissioner and township clerk [now township fiscal officer] could not avoid the aforementioned conflicts if the board of township trustees requires the person, as township clerk, to prepare and present the township's annual tax budget to the county budget commission or to explain to the county budget commission the township's need for moneys from the undivided local government fund and the undivided local government revenue assistance fund"). It is also impractical for a member of a board of education of a local school district to remove himself regularly from funding and budgetary matters that come before the board of education, since such matters arise often and involve a primary function of the board of education.

A person who serves simultaneously as a member of the board of education of a local school district and township administrator within the same county, therefore, is unable to eliminate entirely or avoid sufficiently the conflict of interest resulting from competition over tax moneys generated within the ten-mill limitation. Accordingly, the person is subject to an impermissible conflict of interest that bars him from serving in these two positions at the same time. *See generally* 1957 Op. Att'y Gen. No. 1229, p. 626 (the positions of member of the board of education of a local school district and county administrator within the same county are incompatible because of competition for tax moneys generated within the ten-mill limitation).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the positions of member of the board of education of a local school district and township administrator within the same county are incompatible.

Respectfully,



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Attorney General

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explain to the 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").