

OPINION NO. 92-039**Syllabus:**

A person may simultaneously hold the positions of member of a county solid waste management policy committee and township trustee.

To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Lee Fisher, Attorney General, September 22, 1992

You have requested an opinion addressing the following question:

Are the positions of township trustee and member of a county solid waste management policy committee compatible when the township for which the trustee serves is the host township for a licensed privately owned and operated landfill and when such township, by virtue of its status as the landfill's host, receives certain benefits for itself and its residents?

1989 Op. Att'y Gen. No. 89-037 sets forth five questions for determining whether a public and private position may be held simultaneously:¹

1. Is the public position a classified employment within the terms of R.C. 124.57?
2. Do statutes governing either position limit the outside employment possible?

¹ Except for the purposes of R.C. Chapter 102, the Ohio Revised Code expressly provides that serving as a member of the solid waste management policy committee of a county does not constitute holding a public office or position of employment under the laws of this state. R.C. 3734.54(C).

3. Is there a conflict of interest between the two positions?
4. Are there local charter provisions or ordinances which are controlling?
5. Is there a federal, state, or local departmental regulation applicable?

Op. No. 89-037 at 2-163 and 2-164.²

I. R.C. 124.57

The first question asks whether the public position is a classified employment within the terms of R.C. 124.57, which prohibits classified employees from engaging in partisan political activity, other than to vote and express their political views. A township trustee, as an elected officer, is in the unclassified service. See R.C. 124.11(A)(1); see also R.C. 505.01. Accordingly, the prohibition of R.C. 124.57 has no effect on these two positions.

II. Limitations on Outside Employment

The second question asks whether the statutes governing either position limit the outside employment possible. There is no statute prohibiting the simultaneous holding of the positions of township trustee and member of a county solid waste management policy committee. Hence, the second question may be answered in the negative.

III. Conflict of Interest

The final pertinent question asks whether there is a conflict of interest between the two positions. "A public servant may not simultaneously hold an additional position which would subject him or her to divided loyalties and conflicting duties or to the temptation to act other than in the best interests of the public." Op. No. 89-037 at 2-164. 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." 1980 Op. Att'y Gen No. 80-035 at 2-149; accord *State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344 (Ct. App. Butler County 1934). An examination of the duties of the two positions is required in order to determine whether an individual simultaneously serving as a member of a county solid waste management policy committee and township trustee is subject to an impermissible conflict of interest.

A. Authority of Township Trustees

The responsibilities of a board of township trustees are set forth in R.C. Chapter 505 and related provisions of the Revised Code. Township trustees are granted, in general, those powers and duties related to the government of the township. See, e.g., R.C. 505.17 (may regulate vehicle parking); R.C. 505.27 (may

² The fourth and fifth questions concern the applicability of state and federal departmental regulations and local departmental regulations, charter provisions, and ordinances. There are no applicable state or federal departmental regulations. Further, whether there is an applicable local departmental regulation, charter provision, or ordinance is a matter of local concern; thus it is assumed, for purposes of this opinion, that there are no local departmental regulations, charter provisions, or ordinances that prohibit the simultaneous holding of the two positions in question.

provide, maintain, and operate facilities for, or contract for, the collection, transfer, and disposal of solid wastes); R.C. 505.37 (may provide fire protection); R.C. 505.48 (may provide police protection); R.C. 505.75 (may adopt a building code).

B. Authority of Members of County Solid Waste Management Policy Committee

The members of a county solid waste management policy committee are required to prepare, adopt, and submit to the Director of Environmental Protection, for review and approval, a solid waste management plan for the county solid waste management district. R.C. 3734.54-.55; *see also* R.C. 3734.56 (providing for the preparation, adoption, and submission of an amended plan). The committee is also authorized to levy fees on the disposal of solid wastes. R.C. 3734.57-.572.

C. Analysis of Potential Conflicts

A review of the duties of the two positions reveals the existence of several potential conflicts of interest. As noted above, a county solid waste management policy committee is required to prepare, adopt, amend, and submit the solid waste management plan for the county to the Director of Environmental Protection for review and approval. R.C. 3734.54-.56. During the course of preparing or amending the plan, the committee is required to mail a copy of the plan or any resolution proposing to levy fees on the disposal of solid wastes at solid waste disposal facilities located within the district to each board of township trustees under the jurisdiction of the district. R.C. 3734.55-.57. The board of township trustees is, by ordinance or resolution, required to approve or disapprove the plan or resolution. R.C. 3734.55-.56. In addition, a board of township trustees may provide assistance and staff support to the county solid waste management policy committee. R.C. 3734.54(E).

Insofar as a township trustee may be required to vote on whether to provide assistance and staff support to a county solid waste management policy committee, or upon a resolution or ordinance relating to the approval or disapproval of the solid waste management plan for the county or a resolution proposing to levy fees on the disposal of solid wastes, an individual serving simultaneously within the same county solid waste management district in the positions of township trustee and member of the county solid waste management policy committee is exposed to influences that may prevent him from making completely objective, disinterested decisions. As a member of the county solid waste management policy committee, the individual has, as a general matter, an interest in the acquisition of assistance and support staff for the committee, and in the ratification by the boards of township trustees under the jurisdiction of the district of the solid waste management plan or a resolution proposing to levy fees on the disposal of solid wastes. In view of such interest, the individual, as township trustee, may be predisposed to vote in favor of providing assistance and staff support to the committee, or in favor of ratification of the plan or a resolution proposing to levy fees on the disposal of solid wastes presented to the board of township trustees by the county solid waste management policy committee. A potential conflict of interest, thus, exists because the individual is subject to influences that may prevent him from discharging objectively and in a completely disinterested fashion the duties of township trustee.

Similarly, the individual is also exposed to influences that may prevent his decisions, as a member of the county solid waste management policy committee, from being completely objective. As a member of the committee, an individual is required to vote on matters related to the imposition of fees on the disposal of solid wastes at solid waste disposal facilities located within the county solid waste management district. R.C. 3734.57. Accordingly, if the committee must vote on whether to impose or raise such fees, a member of the committee that is receiving, directly or indirectly, benefits from an owner or operator of a solid waste disposal

facility that is required to pay such fees may be inclined to vote against the imposition of, or the raising of such fees in order to retain or maintain the benefits provided to him by the owner or operator of the facility. *See generally State ex rel. Taylor v. Pinney*, 13 Ohio Dec. 210, 212 (C.P. Franklin County 1902) ("[t]he self interest of the public official and the public interests which he represents, must not be brought into conflict").

As indicated in your request letter, the township in which the individual serves as a trustee has a privately owned and operated solid waste disposal facility. The township is located in the county solid waste management district that has established and convened the county solid waste management policy committee on which the individual is a member. In addition, the owner and operator of the solid waste disposal facility, pursuant to contract, pays the township a host fee, and provides the township free garbage pick-up, well-water testing, and recycling services. Thus, the owner and operator of the solid waste disposal facility is subject to the fees levied by the county solid waste management policy committee, and the individual, as a citizen of the township, *see* R.C. 503.241, is receiving benefits in the form of the free services provided to the citizens of the township by the owner and operator of the solid waste disposal facility. Insofar as the individual, as a member of the county solid waste management policy committee, is required to vote on matters related to the imposition of fees on the disposal of solid wastes at the solid waste disposal facility, the individual may be predisposed to vote against the imposition or the raising of such fees in order to maintain the benefits provided to him, as a citizen of the township, or to the township in general. The individual is thus exposed to influences that may prevent him from discharging his duties as a member of the committee objectively and in a completely disinterested fashion.

The fact that an individual is subject to conflicting duties or divided loyalties, however, does not per se prohibit the simultaneous holding of two positions. Rather, each potential conflict of interest should be considered on its particular facts, and where the possibility of conflict is remote and speculative, the conflict of interest rule is not violated. 1979 Op. Att'y Gen. No. 79-111. Factors used in determining the immediacy of a conflict include, *inter alia*, the remoteness of the conflict, whether the conflict involves the primary functions of each position, and whether the conflict involves budgetary controls. *Id.* at 2-372.

Application of these factors to the potential conflicts of interest that result from the simultaneous holding of the two positions about which you ask indicates that the potential conflicts are remote and speculative. The acquisition of assistance and support staff from a township by a county solid waste management policy committee, the ratification of the solid waste management plan for the county, and the imposition of, or the raising of fees on the disposal of solid wastes at solid waste disposal facilities located within the county solid waste management district are not matters that regularly arise before a board of township trustees or a county solid waste management policy committee. The potential conflicts of interest also do not involve the primary functions of either position or budgetary controls. Moreover, R.C. 102.03 requires the individual to abstain from voting, deliberating, or participating in discussions with regard to matters which are of such a character as to manifest a substantial and improper influence on him with respect to his public duties.³ *See* Ohio Ethics Commission Advisory Op. No. 90-009 (a member of the Real Estate Appraiser Board is prohibited from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his

³ Whether R.C. 102.03 requires the individual, as a member of the county solid waste management policy committee, to abstain from voting, deliberating, or participating in discussions with respect to issues related to the imposition of, or the raising of fees on the disposal of solid wastes at

position with regard to issues which affect the interests of the sponsor of an educational course for whom he is supplying teaching or consulting services); *see also* 1969 Op. Att'y Gen. No. 69-084 at 2-181 (public officials "are disqualified from voting on a matter coming before the agency in which they serve if they have a direct, pecuniary interest in the matter in question"). *But see generally Hamilton v. Board of Comm'rs*, 108 Ohio St. 566, 141 N.E. 684 (1923) (syllabus) ("[t]he fact that a county commissioner owns real estate within the assessable area of an improvement to be taxed by a special assessment for the construction of a road does not of itself disqualify him to act as a county commissioner in proceedings relative to laying out and making a road under Section 6906 *et seq.*, General Code" (now R.C. Chapter 5551)). Because the potential conflicts are remote, and do not involve the primary functions of either position or budgetary controls, an individual who simultaneously holds, within the same county solid waste management district, the positions of township trustee and member of the county solid waste management policy committee is not subject to an impermissible conflict of interest.

IV. Conclusion

It is, therefore, my opinion, and you are hereby advised that a person may simultaneously hold the positions of member of county solid waste management policy committee and township trustee.

solid waste disposal facilities located within the county solid waste management district, is a question that may not be answered by means of an opinion of the Attorney General. Rather, pursuant to R.C. 102.08, the Ohio Ethics Commission is delegated the authority to render advisory opinions interpreting the provisions of R.C. Chapter 102.