

OPINION NO. 90-063**Syllabus:**

1. The mayor of a city who is elected pursuant to R.C. 733.02 is a public officer and is, therefore, not an employee of a governmental agency who is prohibited by the terms of R.C. 3357.05 from holding the position of trustee on the board of trustees of a technical college district.
2. The president of a city council who is elected pursuant to R.C. 733.09, is a public officer and is, therefore, not an employee of a governmental agency who is prohibited by the terms of R.C. 3357.05 from holding the position of trustee on the board of trustees of a technical college district.
3. The director of a vocational school who is employed by the school board of a joint vocational school district, pursuant to R.C. 3319.02, is an employee of a governmental agency within the meaning of R.C. 3357.05 and is, therefore, ineligible to hold the position of trustee on the board of trustees of a technical college district.
4. The principal of a junior high school who is employed by the school board of a local school district, pursuant to R.C. 3319.02, is an employee of a governmental agency within the meaning of R.C. 3357.05 and is, therefore, ineligible to hold the position of trustee on the board of trustees of a technical college district.

**To: Louis M. Audritsh, Chairman, Terra Technical College Board of Trustees,
Fremont, Ohio**

By: Anthony J. Celebrezze, Jr., Attorney General, September 7, 1990

I have before me your request for my opinion on three questions relating to the board of trustees of a technical college. The questions concern the effect of the qualification requirements of R.C. 3357.05 on the eligibility of three particular individuals to be members of the board.

I note first with respect to these questions, that my authority in rendering legal advice to a technical college district is defined by R.C. 3357.02 as giving legal advice in matters relating to its powers and duties. I am unable, however, to make findings of fact or determinations as to the rights of particular individuals by means of the opinion rendering function of this office. See *generally* 1986 Op. Att'y Gen. No. 86-039 at 2-198; 1983 Op. Att'y Gen. No. 83-087 at 2-342 ("[t]he determination of particular parties' rights is a matter which falls within the jurisdiction of the judiciary..."); 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary"). Further, this office is not authorized to exercise on behalf of other state officials discretion which has been delegated to them. See

generally 1985 Op. Att'y Gen. No. 85-007 at 2-25; 1984 Op. Att'y Gen. No. 84-098 at 2-333. I am, therefore, in discussing these questions considering, under the general principles of law that are applicable, whether the positions identified in your question fall within the meaning of the terms used in R.C. 3357.05 and am not making findings concerning the eligibility of particular individuals. *See generally* 1986 Op. Att'y Gen. No. 86-091.

R.C. 3357.05, governing appointments to the board of trustees of a technical college district, states that "[a]ppointees shall be qualified electors residing in the technical college district and *shall not be employees of any governmental agency*. No new trustee shall be appointed who is a member of any board of education." (Emphasis added.) Specifically, you wish to know whether the following positions are employment with a governmental agency thereby falling within the prohibition of R.C. 3357.05:

1. Mayor of a city with the statutory form of government prescribed in R.C. Chapters 731 and 733;
2. President of city council of a city with such a statutory form of government;
3. Director of a vocational school in a joint vocational school district; and
4. Principal of a junior high school in a local school district.

R.C. 3357.05 does not prohibit public *officers*, as distinguished from governmental *employees*, from holding the position of trustee of a technical college district. 1980 Op. Att'y Gen. No. 80-035 at 2-148; 1978 Op. Att'y Gen. No. 78-048. *See generally State ex rel. Newman v. Skinner*, 128 Ohio St. 325, 191 N.E. 127 (1934) (a public officer is not an employee); *accord* 1963 Op. Att'y Gen. No. 3548, p. 58, 61. The standard criteria for determination that a position constitutes a public office include election, oath of office, bond, and statutorily prescribed duties which involve governmental functions. *See State ex rel. Landis v. Board of Commissioners*, 95 Ohio St. 157, 159-60, 115 N.E. 919, 919-20 (1917). *See also, e.g., State ex rel. Milburn v. Pethel*, 153 Ohio St. 1, 90 N.E.2d 686 (1950); *Scofield v. Strain*, 142 Ohio St. 290, 51 N.E.2d 1012 (1943); 1990 Op. Att'y Gen. No. 90-014, slip op. at 2; 1971 Op. Att'y Gen. No. 71-071.

The mayor of a city with a statutory form of government is elected pursuant to R.C. 733.02, required to take an oath of office, R.C. 733.68, required to post bond, R.C. 733.69, and possesses statutorily prescribed duties which involve the exercise of continuing governmental functions, *see, e.g.,* R.C. 733.01 (executive power of city vested in mayor); R.C. 733.03 (powers of mayor). Accordingly, I find that a mayor elected pursuant to R.C. 733.02 is a public officer and, therefore, not an employee of a governmental agency who is prohibited from being a trustee by the terms of R.C. 3357.05.

The president of the city council of a city with a statutory form of government is also an elected official, R.C. 733.09(A), who is required to take an oath and post bond, R.C. 733.68; R.C. 733.69. Pursuant to R.C. 733.09, the president of city council exercises the governmental functions of presiding over the regular and special meetings of council and voting in the case of any tie. *See also* R.C. 733.01 (executive power of city vested in president of council). *See generally State ex rel. Roberts v. Snyder*, 149 Ohio St. 333, 78 N.E.2d 716 (1948). A president of a city council elected pursuant to R.C. 733.09 is clearly a public officer and, therefore, not an employee within the meaning of R.C. 3357.05. *See* 1916 Op. Att'y Gen. No. 1272, vol. I, p. 286, 287 ("[t]he president of council is an officer of the municipality"); 1913 Op. Att'y Gen. No. 343, vol. II, p. 1519, 1520 ("[t]he president [of council] is an officer in the legislative department of the city") (emphasis omitted).¹

¹ I note that the position of trustee on the board of a technical college district is itself a public office. 1980 Op. Att'y Gen. No. 80-035. While

In contrast to the two preceding positions, the positions of director of a vocational school and principal of a junior high school have none of the criteria of a public office. These are administrative positions subject to appointment by their respective school boards pursuant to R.C. 3319.02.² The duties of these positions are not defined by statute, but rather are controlled by the terms of the administrator's contract with the school board, which is referred to throughout R.C. 3319.02 as a contract of employment. R.C. 3319.02 states, *inter alia*, that "[t]he board of education shall execute a written contract of *employment* with each assistant superintendent, principal, assistant principal, and other administrator it *employs or reemploys*" and that "[t]he contract shall specify the *employee's* administrative position and duties, the salary and other compensation to be paid...." R.C. 3319.02(C) (emphasis added). Clearly, a director of a vocational school and a principal of a junior high school are employees of their respective school boards. Therefore, I must next determine whether a school board is a governmental agency.

School districts have long been recognized as political subdivisions of the state in their own right. *See, e.g., City of Cleveland v. Public Library Board*, 94 Ohio St. 311, 316, 114 N.E. 247, 249 (1916) ("the City of Cleveland and the City School District...are nevertheless separate and distinct political subdivisions"); *Cline v. Martin*, 94 Ohio St. 420, 426, 115 N.E. 37, 38 (1916) ("[s]uch [school] boards are agencies of the state"); *accord* 1955 Op. Att'y Gen. No. 5252, p. 240. Although the term "governmental agency" is not defined in R.C. 3357.05, political subdivisions are included within the meaning of the term "governmental agency" when it is defined for other purposes throughout the Revised Code. *See, e.g.,* R.C. 154.01(E); R.C. 166.01(E); R.C. 351.01(D); R.C. 1551.01(A); R.C. 1551.30(D); R.C. 5507.02(H); R.C. 3706.01. *See also* 1972 Op. Att'y Gen. No. 72-035 (syllabus) ("[a] political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function") (emphasis added); *accord* 1989 Op. Att'y Gen. No. 89-063 at 2-274; 1979 Op. Att'y Gen. No. 79-018 at 2-59. Clearly, a school board, as the governing body of a political subdivision of the state, is a governmental agency as that term is commonly understood. *See generally Baker v. Powhatan Mining Co.*, 146 Ohio St. 600, 67 N.E.2d 714 (syllabus, paragraph three) (1946) (absent statutory definition, words are to be interpreted according to their common meaning). Thus, both a director of a vocational school

R.C. 3357.05 does not prohibit a trustee from holding another public office, except that of board of education member, some municipal officers may be prohibited from dual officeholding by the specific terms of a statute or city charter. *See, e.g.,* R.C. 731.02 (members of municipal legislative authority shall not hold any other public office). Dependent on the wording of the prohibition and the particular facts of each case, such a prohibition could either affect eligibility to serve on the board of trustees or result in a forfeiture of the municipal office. Which one of these results would occur in a particular case is an issue distinct from the interpretation of R.C. 3357.05 and not within the scope of this opinion. Previous opinions of this office have held, however, that neither a mayor elected pursuant to R.C. 733.02 nor a president of city council elected pursuant to R.C. 733.09 are subject to any statutory prohibition against holding another public office. *See, e.g.,* 1961 Op. Att'y Gen. No. 1993, p. 26, 27 (mayor); 1956 Op. Att'y Gen. No. 6127, p. 8, 9 (mayor); 1946 Op. Att'y Gen. No. 74, p. 68 (president of city council is an executive officer, not a member of city council, and is not prohibited by statute from holding another public office).

² R.C. 3319.02 grants authority to each school district to contract for the services of "assistant superintendents, principals, assistant principals, and other administrators." The statute refers to "the board of education of each school district" and also has provisions specifically listing city, exempted village, local and county school boards. R.C. 3319.02 does not expressly mention joint vocational school districts. Pursuant to R.C.3311.19(D), however, joint vocational school district boards of education "have the same powers, duties and authority for management and operation" of their districts as do city school district boards, which are specifically included within R.C. 3319.02.

and a principal of a junior high school are employees of a governmental agency within the meaning of R.C. 3357.05.

As a final matter, I note that R.C. 3357.05 establishes the threshold qualifications necessary to serve on a board of trustees of a community technical college district. An individual who meets the standards of R.C. 3357.05 may nonetheless be prohibited from serving on the board because of other factors related to the compatibility of any additional positions held by that individual. These additional factors include subordination of one position to the other, physical impossibility of performing both positions, the existence of a conflict of interest, or other applicable statutes, ordinances or regulations. *See generally* 1979 Op. Att'y Gen. No. 79-111. Thus, if a candidate meets the initial requirements of R.C. 3357.05, the appointing authority should proceed to an examination of such factors. The prohibitions of R.C. 3357.05, however, apply regardless of whether any other compatibility issues actually exist. R.C. 3357.05 represents a legislative determination that employees of governmental agencies and members of school boards are *per se* ineligible to serve on a board of trustees of a technical college district. The prohibition, therefore, applies even though, but for the statute, persons in a least some of these positions would be otherwise eligible to serve on the board.

Accordingly, it is my opinion and you are hereby advised that:

1. The mayor of a city who is elected pursuant to R.C. 733.02 is a public officer and is, therefore, not an employee of a governmental agency who is prohibited by the terms of R.C. 3357.05 from holding the position of trustee on the board of trustees of a technical college district.
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