

**OPINION NO. 83-033****Syllabus:**

A timekeeper for the Ohio Department of Transportation, who is in the classified service of the state, may not serve as a township clerk if the clerk is elected in a partisan election. He may, however, serve as a township clerk if the election for clerk is nonpartisan in nature.

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**To: Daniel R. Gerschutz, Putnam County Prosecuting Attorney, Ottawa, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, June 16, 1983**

I have before me your request for my opinion concerning whether the positions of township clerk and timekeeper for the Ohio Department of Transportation are compatible.

There are no specific statutory prohibitions against holding both the position of township clerk and the position of timekeeper for the Department of Transportation, and I assume that there are no township or Department regulations prohibiting the arrangement. Therefore, I turn to the common law test of compatibility, which asks whether one position is subordinate to, or a check upon the other, whether a person holding both positions would be subject to a conflict of interest, and whether it is physically possible for one person to discharge the duties of both positions. See State ex rel. Attorney General v. Gebert, 12 C.C. (n.s.) 274, 275 (Cir. Ct. Franklin County 1909); 1979 Op. Att'y Gen. No. 79-111.

You state in your letter that, "[t]he position of timekeeper involves keeping track of the time that each man is employed by the Ohio Department of Transportation in Putnam County, keeping track of the amount of stone, fill, etc. in the various jobs and the amount of hours the crews put in various job sites." The duties of a township clerk, which are set forth in R.C. Chapter 507, include keeping a record of "the proceedings of the board of township trustees at all its meetings, and of all its accounts and transactions, including the acceptance of the bonds of township officers," R.C. 507.04; notifying the board of elections of vacancies in township offices and of changes in the boundaries of the township, R.C. 507.05; administering oaths and taking and certifying affidavits pertaining to the official business of the township and local school district, R.C. 507.06; keeping the township's financial records, R.C. 507.07; and recording the official bonds of constables, R.C. 507.08. It is apparent that the duties of township clerk and timekeeper for the Department of Transportation are performed independently of one another and neither position is subordinate to, or a check upon the other. Nor does it appear that one person serving in both positions would be subject to a conflict of interest. You have advised me that, "the Ohio Department of Transportation position is eight hours on a daily basis with no overtime and the township clerk involves keeping records which can be done at night. Township meetings are only held at night also." Thus, it is physically possible for one person to perform the duties of both positions.

In your letter you state that the position of timekeeper is in the classified service of the state. R.C. 124.57 prohibits a classified employee from engaging in political activity. In reliance on Heidtman v. City of Shaker Heights, 163 Ohio St. 109, 126 N.E.2d 138 (1955), which held that R.C. 124.57 prohibits only partisan political activity, my predecessor has taken the position that classified employees may be candidates in nonpartisan elections. 1982 Op. Att'y Gen. No. 82-085; 1978 Op. Att'y Gen. No. 78-022; 1974 Op. Att'y Gen. No. 74-034. Candidates for township clerk are nominated by petition, rather than in a primary election, unless a majority of the township electors files a petition with the board of elections requesting a primary. R.C. 3513.01; R.C. 3513.253. Candidates who are nominated by petition seek election on a nonpartisan ballot. R.C. 3505.04. You note in your letter that the election for township clerk was nonpartisan. Thus, R.C. 124.57 would not preclude the individual in question from serving as timekeeper and township clerk. An employee in the classified service, however, could not serve as a township clerk if the election for clerk were partisan in nature.

In 1960 Op. Att'y Gen. No. 1663, p. 597, it was concluded in the first paragraph of the syllabus, that, "[u]nder the restrictions of [R.C. 124.57], the elective position of township clerk is incompatible with the position of state department of highways employee when the latter position is in the classified civil service." (In 1972, the Department of Transportation was created, superseding and succeeding to the powers and duties of the Department of Highways. See R.C. 5501.03; 1971-1972 Ohio Laws, Part II, 2399 (Am. Sub. H.B. 1064, eff. Sept. 29, 1972).) This conclusion was rendered prior to my predecessor's reconsideration of the scope of R.C. 124.57, and the first paragraph of the syllabus of 1960 Op. No. 1663 was specifically overruled in Op. No. 78-022.

In conclusion, it is my opinion, and you are advised, that a timekeeper for the Ohio Department of Transportation, who is in the classified service of the state, may not serve as a township clerk if the clerk is elected in a partisan election. He may, however, serve as a township clerk if the election for clerk is nonpartisan in nature.