

September 7, 2017

James Zehringer, Director  
Ohio Department of Natural Resources  
2045 Morse Road  
Columbus, Ohio 43229-6693

SYLLABUS:

2017-028

A district law enforcement supervisor employed by the Department of Natural Resources Division of Wildlife is subject to an impermissible conflict of interest when he serves as an auxiliary deputy sheriff who is under the supervision and control of a county sheriff for one of the counties that is part of the district supervised by the district law enforcement supervisor, and is required to follow the law enforcement policies, techniques, and standards of the county sheriff and the Department of Natural Resources Division of Wildlife.



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September 7, 2017

OPINION NO. 2017-028

James Zehringer, Director  
Ohio Department of Natural Resources  
2045 Morse Road  
Columbus, Ohio 43229-6693

Dear Director Zehringer:

You have requested an opinion whether a district law enforcement supervisor employed by the Department of Natural Resources Division of Wildlife may serve simultaneously as an auxiliary deputy sheriff in Monroe County. You have explained that the district, which the district law enforcement supervisor oversees, includes Monroe County.

A seven-question test is used to determine whether two public positions are compatible. 1999 Op. Att’y Gen. No. 99-045, at 2-279. All seven questions must be answered in favor of compatibility in order for a person to hold simultaneously the two public positions. *Id.* Question five asks whether a conflict of interest exists between the two positions. *Id.*<sup>1</sup> As is explained below, we believe that an impermissible conflict of interest exists between the two positions such that the same person may not hold the two positions at the same time.

A conflict of interest exists “when an individual’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.’” 1989 Op. Att’y Gen. No. 89-052, at 2-220 (quoting 1985 Op. Att’y Gen. No. 85-100, at 2-427). Further, “a conflict of interest exists when a public servant is subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public.” 1998

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<sup>1</sup> As the Ohio Ethics Commission is authorized to determine the applicability of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43, R.C. 102.08, the Attorney General “refrain[s] from interpreting and applying [those] provisions by way of a formal opinion.” 2011 Op. Att’y Gen. No. 2011-008, at 2-60 n.1. For a determination of whether R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43 applies to the positions at issue in this opinion, we recommend that you contact the Ohio Ethics Commission. 2011 Op. Att’y Gen. No. 2011-008, at 2-60 n.1.

Op. Att’y Gen. No. 98-033, at 2-188 to 2-189. To determine whether a conflict of interest exists between the two positions, we must examine the duties of each of those positions.

The position of district law enforcement supervisor requires that the person be commissioned as a wildlife officer by the Department of Natural Resources Division of Wildlife. Wildlife officers are the law enforcement officers of the Division of Wildlife. R.C. 1531.13. They “shall enforce all laws pertaining to the taking, possession, protection, preservation, management, and propagation of wild animals” and “all laws against hunting without permission of the owner or authorized agent of the land on which the hunting is done.” *Id.* “A wildlife officer ... may search any place which the officer has good reason to believe contains a wild animal or any part of a wild animal taken or had in possession contrary to law or division rule ... and seize any the officer finds so taken or possessed.” *Id.*

In addition, “[a]ny regularly employed salaried wildlife officer may enter any private lands or waters if the wildlife officer has good cause to believe and does believe that a law is being violated.” *Id.* Within the limits of a wildlife officer’s territorial jurisdiction, a wildlife officer may arrest and detain without a warrant people found violating a state law, “for the purpose of enforcing the criminal laws of the state on any property owned, controlled, maintained, or administered by the department of natural resources[.]” R.C. 1531.13; R.C. 2935.03(A)(2). A wildlife officer may also “enforce [R.C. 2923.12 (carrying concealed weapons), R.C. 2923.15 (using weapons while intoxicated), and R.C. 2923.16 (improperly handling firearms in a motor vehicle)] throughout the state and may arrest without warrant any person who, in the presence of the chief [of the division of wildlife] or any wildlife officer, is engaged in the violation of any of those laws.” R.C. 1531.13. Finally, “[a] wildlife officer may render assistance to a state or local law enforcement officer at the request of that officer or may render assistance to a state or local law enforcement officer in the event of an emergency.” *Id.*

The job description for the position of district law enforcement supervisor describes the duties of the position as follows:

Oversees wildlife investigations [and] game protection activities [and] supervises Wildlife Investigators in Wildlife District 4; directs district law enforcement programs [and] activities which include fish, wildlife [and] watercraft enforcement; pollution fish kill investigations; state property protection within the jurisdiction of the Division of Wildlife streams [and] private lands litter investigations; weapon offenses listed under [R.C. 2923.12 and R.C. 2923.16]; ensures that all polices [and] procedures are followed; organizes [and] supervises covert operations within the district or on a statewide level.

Prepares [and] recommends amendments to the district law enforcement programs including long-range plans [and] special projects; prepares district law enforcement budget including equipment [and] personnel needs; plans, recommends [and] directs an approved district law enforcement in-service training program; instructs during pre-service training of new wildlife officers;

recommends [and] prepares proposed amendments to wildlife laws [and] division orders.

Reviews [and] evaluates the district law enforcement activities to determine program progress [and] effectiveness; prepares monthly detailed activity [and] program progress reports [and] annual district enforcement report; maintains driver's license to operate assigned state vehicle.

Directs law enforcement public relations [and] promotes the Turn-In-A-Poacher (TIP) program for the district; coordinates district law enforcement activities with other Natural Resources divisions, U.S. Fish & Wildlife Services, Highway Patrol, EPA [and] local police departments; performs personnel investigations [and] makes recommendations for disciplinary action.

You have explained that the jurisdiction of the particular district law enforcement supervisor involved in your letter is statewide, but that the individual is located in Athens County and does not routinely work outside Athens County. As district law enforcement supervisor, the individual supervises three wildlife investigators, one of whom is assigned to the northern unit, which encompasses an area that includes Monroe County.

An auxiliary deputy sheriff, or special deputy sheriff, is a deputy sheriff appointed by a county sheriff pursuant to R.C. 311.04<sup>2</sup> to serve "on terms that are different from those on which a regular deputy serves." 2014 Op. Att'y Gen. No. 2014-032, at 2-276 n.1; 1989 Op. Att'y Gen. No. 89-071, at 2-326. An auxiliary deputy sheriff may have limited duties, serve at intermittent times or as needed, or serve without compensation. 1989 Op. Att'y Gen. No. 89-071, at 2-326. *See also State ex rel Geyer v. Griffin*, 80 Ohio App. 447, 457, 76 N.E.2d 294 (Allen County 1946) ("[a] deputy sheriff may be special in the sense that he is authorized to perform only part of the duties of the sheriff, or may be special in the sense that he is appointed by the sheriff without being assigned to perform any duties of the sheriff but being subject to assignment to duty by the sheriff from time to time as the sheriff in his discretion may determine"). Your letter explains that the auxiliary deputy sheriff position involves serving on various special details, such as security details at special events, including sporting events, fairs, and festivals. The Monroe County Sheriff schedules and supervises the auxiliary deputy. The Monroe County Sheriff does not pay the auxiliary deputy for his service; rather, the auxiliary deputy is paid directly by the entity that contracts with the office of the county sheriff for services.

Several Attorney General opinions have concluded that an individual may not serve in two law enforcement positions, or two positions that have an investigatory function, in overlapping jurisdictions. *See, e.g.,* 2017 Op. Att'y Gen. No. 2017-004 (syllabus) ("[a] secret service officer appointed by the prosecuting attorney of Brown County pursuant to R.C. 309.07 may not serve at the same time as an investigator appointed by the coroner of Brown County pursuant to R.C. 313.05(A)(3)"); 1998 Op. Att'y Gen. No. 98-033 (syllabus, paragraph 2) ("[a]n

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<sup>2</sup> R.C. 311.04(B)(1) authorizes a county sheriff to appoint one or more deputy sheriffs.

individual who holds a special deputy sheriff's commission that allows the individual to act as a volunteer, part-time, swat team tactical emergency medical technician is subjected to impermissible conflicts of interest when he serves also in the position of county coroner or deputy coroner"); 1996 Op. Att'y Gen. No. 96-017 (syllabus) ("[t]he position of deputy sheriff is incompatible with the position of part-time village police officer, where the village is within the same county served by the deputy sheriff"); 1989 Op. Att'y Gen. No. 89-072 (syllabus) ("[t]he position of village police officer is incompatible with the position of county department of human services fraud investigator"); 1989 Op. Att'y Gen. No. 89-044 (syllabus, paragraphs 1 and 2) (the positions of deputy sheriff and village police officer and deputy sheriff and township police constable are incompatible when the village and township are within the same county served by the county sheriff); 1987 Op. Att'y Gen. No. 87-002 (syllabus) ("[t]he position of deputy sheriff is incompatible with the positions of village chief of police, deputy marshal, and police officer, where the village is within the same county served by the deputy sheriff"); 1986 Op. Att'y Gen. No. 86-007 (syllabus) ("[t]he positions of parole officer employed by the state Department of Rehabilitation and Correction and village police chief are incompatible"); 1985 Op. Att'y Gen. No. 85-021 (syllabus) ("[t]he positions of deputy sheriff and chief of police of a township police district within the same county are incompatible").

Generally, those opinions concluded that an impermissible conflict of interest existed based upon two principles. The first is that an individual serving in the two positions at the same time would face divided loyalties. In 1996 Op. Att'y Gen. No. 96-017, at 2-67, the Attorney General explained that "a law enforcement officer owes a duty of loyalty to the law enforcement agency that employs him." Accordingly, an individual who serves in two law enforcement positions at the same time would face divided duties of loyalty. *Id.*; *see also* 1987 Op. Att'y Gen. No. 87-002, at 2-9; 1985 Op. Att'y Gen. No. 85-021, at 2-82 to 2-83. Similarly, an individual who is employed by an agency that may investigate the other agency may find it difficult to remain impartial. For example, in 2017 Op. Att'y Gen. No. 2017-004, at 2-36, the Attorney General explained:

[A] conflict of interest may arise if the prosecuting attorney calls upon the secret service officer to investigate crimes alleged to have been committed by or against the coroner or employees of the coroner's office. A person serving simultaneously as a secret service officer and an investigator for the coroner would have difficulty remaining impartial when investigating the actions of, or allegations against, his superior (the coroner) or any of his coworkers at the coroner's office. (Internal citations omitted.)

The Attorney General further explained that "[a] person serving simultaneously as a secret service officer and a coroner's investigator might be unduly influenced, in his role as the coroner's investigator, to collect evidence that supports the theory of the prosecuting attorney and ignore evidence that may be antithetical to the prosecuting attorney's case." 2017 Op. Att'y Gen. No. 2017-004, at 2-37; *see also* 1998 Op. Att'y Gen. No. 98-033, at 2-189 (providing preferential treatment).

The second principle that guided the conclusions reached in the prior Attorney General opinions is that the individual would be required to follow conflicting policies, procedures, or techniques in situations where the jurisdictions of the two agencies overlap. 1989 Op. Att’y Gen. No. 89-044, at 2-188 and 2-189; 1986 Op. Att’y Gen. No. 86-007, at 2-31 to 2-32. A law enforcement officer is expected to follow the policies, procedures, and techniques of the law enforcement agency that appoints him. *See* 1989 Op. Att’y Gen. No. 89-044, at 2-188 and 2-189; 1987 Op. Att’y Gen. No. 87-002, at 2-9.<sup>3</sup> Thus, when the same person is serving as a law enforcement officer for two separate agencies at the same time, the person may be required to follow different policies, procedures, and techniques. We conclude that an individual, if permitted to serve in the positions of district law enforcement supervisor and auxiliary deputy sheriff at the same time, may face conflicts of interest arising from divided loyalties and being required to follow the policies, procedures, and techniques of two different law enforcement agencies in an overlapping jurisdiction.

The district law enforcement supervisor for District 4 and auxiliary deputy sheriff in Monroe County have jurisdiction over territory in Monroe County. As an auxiliary deputy sheriff, the individual will be required to investigate crimes that occur within the scope of the duties assigned to him by the county sheriff. 2014 Op. Att’y Gen. No. 2014-032, at 2-281 (“[a]n auxiliary deputy sheriff is a deputy ‘authorized to perform only some of the duties of the county sheriff, or appointed by the sheriff without being immediately assigned to perform any of his duties, but subject to duty from time to time as the sheriff in his discretion may determine’” (quoting 1991 Op. Att’y Gen. No. 91-037, at 2-199)); 1998 Op. Att’y Gen. No. 98-033, at 2-187 (“the duty to preserve the public peace necessarily requires the county sheriff and his deputies to investigate crimes that occur within the county”). In addition, a deputy sheriff “shall enforce the laws and division rules for the taking, possession, protection, preservation, and propagation of wild animals and for this purpose shall have the power conferred upon wildlife officers.” R.C. 1531.16. While conducting those investigations, an auxiliary deputy sheriff owes a duty of loyalty to the office of the county sheriff and is required to follow the policies, procedures, and techniques established by the county sheriff. 1987 Op. Att’y Gen. No. 87-002, at 2-9.

The district law enforcement supervisor oversees and coordinates the investigation of crimes in Monroe County that are within the jurisdiction of the Department of Natural Resources

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<sup>3</sup> The letter requesting the 1989 opinion indicated that “[t]here are no conflicting duties and interests ... nor are any standards or policies imposed upon him as a Deputy Sheriff that would conflict with his performance of duties in the [v]illage.” 1989 Op. Att’y Gen. No. 89-044, at 2-188 n.3. The opinion reasoned, however, “[t]he fact that the positions in question have different appointing authorities, statutorily imposed duties and jurisdictional limitations militates against a finding of no conflicting duties and interests. Thus, I cannot concur in your assessment that an individual who serves in these two positions will not be subject to a conflict of interest.” *Id.*

Division of Wildlife.<sup>4</sup> As a commissioned wildlife officer, the district law enforcement supervisor has the authority of a wildlife officer set forth in R.C. Chapter 1531. A person who serves as a district law enforcement supervisor owes a duty of loyalty to the Department of Natural Resources Division of Wildlife and is required to follow the policies, procedures, and techniques established by the Chief of the Division of Wildlife. Thus, a person, who serves simultaneously as a district law enforcement supervisor for the Department of Natural Resources Wildlife Division and an auxiliary deputy sheriff in a county that is within the district supervised by the district law enforcement supervisor, is subject to conflicting loyalties and may be required to follow different policies, procedures, and techniques in an overlapping jurisdiction.

Law enforcement personnel of the Department of Natural Resources Division of Wildlife and the Monroe County Sheriff may interact with each other while conducting various criminal investigations. For example, the Department of Natural Resources Division of Wildlife and the Monroe County Sheriff may conduct criminal investigations in Monroe County in conjunction with one another. Additionally, a member of the Department of Natural Resources Division of Wildlife may investigate a member of the county sheriff's office, or vice versa. In those situations, the conflicts of interest arising from conflicting loyalties and the requirement to follow different policies, procedures, and techniques are especially pronounced. When an individual who serves in both positions at the same time participates in an investigation in Monroe County that involves both agencies, the person may find it difficult to set aside his loyalty to the other agency. In addition, if, as auxiliary deputy sheriff, the person is required to investigate a crime that a wildlife officer would also have jurisdiction to investigate, the person will be required to follow the policies, procedures, and techniques of two different law enforcement agencies. Therefore, we conclude that a person, who is serving simultaneously as a district law enforcement supervisor for the Department of Natural Resources Division of

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<sup>4</sup> Even though the district law enforcement supervisor does not directly supervise the wildlife officer stationed in Monroe County, or a Monroe County deputy sheriff who may be involved in an investigation conducted by both agencies, the district law enforcement supervisor directly supervises the northern unit investigator who directly supervises the wildlife officer in Monroe County. In addition, as the district law enforcement supervisor, he oversees the investigations conducted by the wildlife officers of District 4 and coordinates investigations conducted with other law enforcement agencies. Providing oversight and coordination for investigations conducted by, or involving, wildlife officers in District 4 makes the district law enforcement supervisor directly or indirectly involved in those investigations. *See* 2006 Op. Att'y Gen. No. 2006-023, at 2-207 (“[a]s the head of the township’s police department, the police chief may not abstain from overseeing or participating in all departmental matters or investigations insofar as the chief is responsible for exercising or delegating all departmental decision-making authority. This means that a township police chief is directly or indirectly involved in all departmental matters or investigations, and, as a result, exerts his influence in such matters or investigations”).

Wildlife and an auxiliary deputy sheriff in a county that is located within the district supervised by the district law enforcement supervisor, is subject to potential conflicts of interest.

We must now determine whether the existence of those potential conflicts of interest prohibits a person from holding both positions at the same time. Whether potential conflicts of interest are impermissible depends upon “the immediacy of the conflicts [and] whether the conflicts may be sufficiently avoided or eliminated entirely[.]” 2006 Op. Att’y Gen. No. 2006-010, at 2-86.

The pertinent factors used in making this determination include, but are not limited to, the probability of the conflict, the ability of the person to remove himself from the conflict (should it arise), whether the person exercises decision-making authority in both positions, and whether the conflict relates to the primary functions of each position, or to financial or budgetary matters.

*Id.* at 2-86 to 2-87 (citation omitted).

The conflicts of interest addressed above are not remote or speculative; rather, they exist from the moment that the person, who is a district law enforcement supervisor, is appointed to the position of auxiliary deputy sheriff in an overlapping jurisdiction. So long as the person is holding both positions at the same time, it is not possible for the person to remove himself from the conflicts. The person exercises decision-making authority in both positions and the conflicts of interest relate to the primary functions of the positions. It is imperative that law enforcement officers discharge their duties impartially and free from influences that prevent objectivity. 1996 Op. Att’y Gen. No. 96-017, at 2-67. “The integrity of the law enforcement profession demands that the actions, conduct, and motives of law enforcement officers be beyond reproach.” *Id.*; *see also* 2017 Op. Att’y Gen. No. 2017-004, at 2-38 (“[o]ur system of justice demands that a coroner and a prosecuting attorney perform the distinct, yet collaborative duties of their offices in an unbiased, professional manner”). Therefore, we conclude that a district law enforcement supervisor employed by the Department of Natural Resources Division of Wildlife is subject to an impermissible conflict of interest when he serves as an auxiliary deputy sheriff who is under the supervision and control of a county sheriff for one of the counties that is part of the district supervised by the district law enforcement supervisor, and is required to follow the law enforcement policies, techniques, and standards of the county sheriff and the Department of Natural Resources Division of Wildlife.<sup>5</sup>

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<sup>5</sup> This opinion does not consider and does not address law enforcement officers who serve in special duty assignments for the same law enforcement agency that regularly employs them (*e.g.*, a regular deputy sheriff who accepts a special duty assignment to serve as a deputy sheriff for the same county at a local sporting event).



There are Attorney General opinions that have concluded that an individual may serve in two law enforcement positions in overlapping jurisdictions. *See, e.g.*, 2003 Op. Att’y Gen. No. 2003-007; 1992 Op. Att’y Gen. No. 92-024. Those opinions involve circumstances that do not apply here and may be distinguished from your situation. For example, in 2003 Op. Att’y Gen. No. 2003-007, at 2-43 n. 4, the Attorney General concluded that the same person may be appointed and serve as a police officer for a township police district and as a police constable because R.C. 505.49(B)(2) expressly authorizes such dual appointment. There is no statute that expressly authorizes a district law enforcement supervisor for the Department of Natural Resources Division of Wildlife to serve simultaneously as an auxiliary deputy sheriff.

In 1992 Op. Att’y Gen. No. 92-024, at 2-83, the Attorney General was asked whether a township police officer may simultaneously be commissioned as a special deputy sheriff solely for the purpose of exercising county-wide arrest powers. The Attorney General concluded that holding both positions simultaneously in that particular situation was permissible because the person was “not required as a special deputy sheriff to follow the law enforcement standards, policies, and techniques established by the county sheriff or to discharge any duties on behalf of the county sheriff.” *Id.* at 2-85. Rather, in that situation, “[t]he township police officer, as a special deputy sheriff, remain[ed] under the immediate supervision and control of the township chief of police, and [was] required to follow, even when acting outside the territory of the township police district, the law enforcement standards, policies, and techniques established by the township.” *Id.* at 2-84. The person who is the subject of your letter, as an auxiliary deputy sheriff, will be supervised and assigned duties by the Monroe County Sheriff.

### **Conclusion**

Based on the foregoing, it is my opinion, and you are hereby advised that a district law enforcement supervisor employed by the Department of Natural Resources Division of Wildlife is subject to an impermissible conflict of interest when he serves as an auxiliary deputy sheriff who is under the supervision and control of a county sheriff for one of the counties that is part of the district supervised by the district law enforcement supervisor, and is required to follow the law enforcement policies, techniques, and standards of the county sheriff and the Department of Natural Resources Division of Wildlife.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General