

April 2, 2019

The Honorable James VanEerten
Ottawa County Prosecuting Attorney
315 Madison Street, Suite 205
Port Clinton, Ohio 43452

SYLLABUS:

2019-012

A person may serve simultaneously as the elected, part-time Law Director of the City of Port Clinton and full-time assistant prosecuting attorney of Ottawa County primarily assigned to juvenile prosecutions and working approximately 35 hours per week, provided the person does not (1) serve as the county prosecuting attorney's designee on the county budget commission; (2) prepare the tax budget for either Ottawa County or the City of Port Clinton or advocate for either tax budget before the county budget commission; (3) participate in annexation proceedings involving the City of Port Clinton as assistant prosecuting attorney; (4) review, draft, or negotiate contracts entered into between the City of Port Clinton and the Ottawa County Board of Commissioners or any entity represented by the county prosecuting attorney as assistant prosecuting attorney; or (5) represent the city in legal proceedings against an entity represented by the county prosecuting attorney or represent an entity on behalf of the county prosecuting attorney in legal proceedings against the city. (1997 Op. Att'y Gen. No. 97-034, approved and followed.)



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April 2, 2019

OPINION NO. 2019-012

The Honorable James VanEerten
Ottawa County Prosecuting Attorney
315 Madison Street, Suite 205
Port Clinton, Ohio 43452

Dear Prosecutor VanEerten:

You have requested an opinion whether a person may serve simultaneously as the elected, part-time Law Director of the City of Port Clinton and full-time assistant prosecuting attorney for Ottawa County working 35 hours per week and primarily, although not exclusively, assigned to juvenile prosecutions.

Compatibility Test

The following seven questions are used to determine whether a person may hold two public positions simultaneously:

1. Is either position in the classified service for purposes of R.C. 124.57?
2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?
3. Is one position subordinate to, or, in any way, a check upon the other position?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances that are controlling?
7. Is there a Federal, state, or local departmental regulation applicable?

2014 Op. Att’y Gen. No. 2014-022, at 2-196; 1979 Op. Att’y Gen. No. 79-111, at 2-367 to 2-368. All seven questions must be resolved in favor of compatibility for the positions to be compatible. 2013 Op. Att’y Gen. No. 2013-008, at 2-78. Consequently, if one of the seven questions is resolved against a finding of compatibility, the positions are incompatible. *Id.* at 2-79.

The Positions of Elected, Part-Time Law Director of Port Clinton and Full-Time Assistant Prosecuting Attorney of Ottawa County are Compatible, Subject to Conditions

The first question of the compatibility test asks whether either position is a classified position within the terms of R.C. 124.57, which prohibits an officer or employee in the classified service of a county or city from participating in certain political activities:

No officer or employee in the classified service of the ... several counties [or] cities ... shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political party or for any candidate for public office; ... nor shall any officer or employee in the classified service of the ... several counties [or] cities ... be an officer in any political organization or take part in politics other than to vote as the officer or employee pleases and to express freely political opinions.

R.C. 124.57(A); *accord* 2A Ohio Admin. Code 123:1-46-02(A), (C) (describing the prohibited political activities for employees in the classified civil service of the state). The classified civil service comprises “all persons in the employ of the ... several counties [and] cities” unless specifically excluded from the classified civil service or specifically included in the unclassified civil service. *See* R.C. 124.11(B); *see also* 2017 Op. Att’y Gen. No. 2017-035, at 2-342. All officers elected by popular vote or persons appointed to fill vacancies in those offices are in the unclassified service, as are assistant county prosecuting attorneys. R.C. 124.11(A)(1), (11). The position of elected Law Director of Port Clinton is in the unclassified service pursuant to R.C. 124.11(A)(1). Similarly, the position of assistant prosecuting attorney of Ottawa County is in the unclassified service pursuant to R.C. 124.11(A)(11). The first question of the compatibility test is, therefore, resolved in favor of compatibility.

The second question of the compatibility test asks whether a constitutional provision or statute prohibits a person from serving in both positions at the same time. No constitutional provision or statute of which we are aware prohibits the service in question. Accordingly, the second question of the compatibility test is resolved in favor of compatibility.

The third question of the compatibility test asks whether one of the positions is subordinate to, or otherwise a check upon the other position. “An assistant county prosecuting attorney is appointed by and serves at the pleasure of the county prosecuting attorney.” 1997 Op. Att’y Gen. No. 97-034, at 2-196; R.C. 309.06. An elected law director serves at the pleasure of the voters of the municipal corporation that elected the law director. R.C. 733.49. Accordingly, neither position is subordinate to the other. Moreover, neither position acts as a check upon the other. *See* 1997 Op. Att’y Gen. No. 97-034, at 2-196 (the positions of assistant county prosecuting attorney and village solicitor do not act as

a check upon each other). Therefore, the third question of the compatibility test may be answered in favor of compatibility.

The fourth question of the compatibility test asks whether it is physically possible for one person to serve simultaneously in the positions at issue. As an elected official, the law director of a municipal corporation such as Port Clinton is not required to devote a specified number of hours to the performance of his or her duties. *See generally* R.C. 733.49-.58; R.C. 733.62-.621 (describing the powers, duties, and qualifications of a law director of a statutory city); *accord* 2017 Op. Att’y Gen. No. 2017-043, at 2-411 to 2-412 (“[a]s an elected official, a township trustee is not required to devote specified hours to the performance of his duties”). We note that a municipal law director is required to advise the municipal legislative authority as well as municipal officers. R.C. 733.54. A municipal law director is also required to report annually to the municipal legislative authority at the legislative authority’s first regular meeting in January regarding the business of the law director’s office. R.C. 733.62. Nothing in the Revised Code, however, establishes a minimum number of hours that the law director is required to work. Further, the Revised Code does not require a law director to be present at meetings of the municipal legislative authority, except perhaps the first regular meeting of the legislative authority each year. *See id.* You have indicated that the assistant prosecuting attorney working in your office is expected to work approximately 35 hours per week. It is our assumption that the hours of work are during regular business hours. It appears to us, therefore, that it is conceivable that one person could physically discharge the duties of both the offices of assistant prosecuting attorney and elected, part-time Law Director of the City of Port Clinton. Generally the question of physical ability to discharge the duties of two positions is a matter best left answered by the local officials familiar with the responsibilities and time commitments of each position. 2004 Op. Att’y Gen. No. 2004-051, at 2-438; *State ex rel. Gretick v. Jeffrey*, 12 Ohio St. 3d 55, 56, 465 N.E.2d 412 (1984) (a person may hold the positions of county commissioner and full-time principal at a high school where there is no proof that the person is physically unable to perform the duties of both positions). Because the position of assistant county prosecuting attorney is, in this instance, considered a full-time position, we advise you and the person who is considering seeking the office of Law Director of Port Clinton to evaluate whether it is physically possible for him or her to hold both positions simultaneously. If there is a direct and regular conflict between the times when the person is required to perform the duties of both positions, the positions are incompatible. *See* 2017 Op. Att’y Gen. No. 2017-043, at 2-412. Otherwise, the fourth question of the compatibility test may be answered in favor of compatibility.

The fifth question of the compatibility test asks whether there are any impermissible conflicts of interest between the positions.¹ A person may not serve simultaneously in two positions when a

¹ Pursuant to R.C. 102.08, the Ohio Ethics Commission determines the applicability of the ethics and conflict of interest provisions of R.C. Chapter 102, R.C. 2921.42, and R.C. 2921.43. The Attorney General, therefore “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 those provisions apply to the positions at issue in this opinion, we recommend that you contact the Ohio Ethics Commission. *See id.* Likewise, the Ohio Board of Professional

conflict of interest exists between the positions. 2017 Op. Att’y Gen. No. 2017-014, at 2-130. “[C]onflicts of interest occur when a person who holds two positions at the same time is subject to divided loyalties, conflicting duties, or to the temptation to act other than in the public’s best interest.” 2009 Op. Att’y Gen. No. 2009-005, at 2-30. Determining whether a conflict of interest exists between two positions first requires us to examine the “powers, duties, and responsibilities of the respective positions.” *Id.* If our review finds a conflict of interest between the two positions does indeed exist, we will next need to determine whether the conflict may be sufficiently mitigated or eliminated entirely. “The mere existence of a conflict of interest does not automatically render two positions incompatible.” 2017 Op. Att’y Gen. No. 2017-035, at 2-343. “When the possibility of conflict is remote and speculative and can be mitigated or avoided, the conflict of interest rule is not violated.” *Id.*; see 2004 Op. Att’y Gen. No. 2004-019, at 2-158 (“[w]here it can be demonstrated that the conflicts may be sufficiently avoided or eliminated entirely, the person may serve in both positions”). In determining whether a conflict of interest can be sufficiently avoided or mitigated, we consider factors that include, but are not limited to, “the probability of the conflicts occurring, the ability of the person to remove himself from any conflicts that may occur, whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters.” 2004 Op. Att’y Gen. No. 2004-051, at 2-439.

Your question involves the position of an assistant prosecuting attorney assigned primarily to juvenile prosecutions. Assistant prosecuting attorneys serve at the pleasure of the county prosecuting attorney and “aid the prosecuting attorney in discharging his statutory responsibilities and functions by performing such duties and functions as may be assigned by the prosecuting attorney.” 1999 Op. Att’y Gen. No. 99-027, at 2-174. As such, we must examine the duties of a county prosecuting attorney “to determine the potential duties of an assistant prosecuting attorney.” 2014 Op. Att’y Gen. No. 2014-011, at 2-92. “An assistant prosecuting attorney ... acts for, and on behalf of, the prosecuting attorney.” 2016 Op. Att’y Gen. No. 2016-036, at 2-446. However, an assistant prosecuting attorney does not perform all of the duties that a county prosecuting attorney is responsible to perform. Rather, “an assistant prosecuting attorney performs only those duties, and undertakes only those responsibilities,” as are delegated to the assistant prosecuting attorney by the county prosecutor. *Id.* at 2-447.

Conduct of the Supreme Court is authorized to issue advisory opinions concerning the application of the Ohio Rules of Professional Conduct. “Because the Attorney General will abstain from rendering an opinion where another governmental entity has been granted the authority to render advisory opinions concerning the relevant subject matter,” we will refrain from advising you on the professional responsibilities of an assistant county prosecuting attorney and city director of law under the Ohio Rules of Professional Conduct. See 1997 Op. Att’y Gen. No. 97-034, at 2-200 n.2 (citation and internal quotation marks omitted). Therefore, we recommend that you or the individual directly involved in this situation request an advisory opinion from the Board of Professional Conduct concerning the application of the Ohio Rules of Professional Conduct to the situation described in your letter. See *id.*

A county prosecuting attorney serves as legal counsel to county and township officers, boards, and commissions. R.C. 309.09; 2014 Op. Att’y Gen. No. 2014-011, at 2-92. As legal counsel for such entities, a county prosecuting attorney may be required to approve contracts entered into by the board of county commissioners and townships, including contracts entered into between the county and a municipal corporation, or a township and a municipal corporation. *See* R.C. 307.15(A)(1) (“the board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation . . . , and such legislative authorit[y] may enter into agreements with the board of county commissioners, whereby the board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, on behalf of the . . . legislative authority, that such . . . legislative authority may exercise, perform, or render”). The county prosecuting attorney also is a member of the county budget commission, which is responsible for reviewing the tax budgets of political subdivisions within the county and adjusting the estimated amounts required from the general property tax for each fund. *See* R.C. 5705.27; *see also* R.C. 5705.28-.32.

In Ottawa County, the county prosecuting attorney is responsible for prosecuting in Ottawa County Municipal Court all misdemeanors arising under state law in Ottawa County, including those misdemeanors that have occurred within the City of Port Clinton. R.C. 1901.20(A)(1); R.C. 1901.34(B). In addition, the prosecuting attorney of Ottawa County may enter into an agreement with any municipal corporation in the county, such as the City of Port Clinton, to prosecute all criminal cases and violations of municipal ordinances that occur within the municipal corporation. *See* R.C. 1901.34(D). “For prosecuting these cases, the prosecuting attorney and the municipal corporation may agree upon a fee to be paid by the municipal corporation, which fee shall be paid into the county treasury, to be used to cover expenses of the office of the prosecuting attorney.” *Id.* Finally, a county prosecuting attorney has a duty to assist a juvenile court “in presenting the evidence at any hearing or proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child or juvenile traffic offender.” R.C. 2151.40; *see* 2009 Op. Att’y Gen. No. 2009-053, at 2-400 n.5; R.C. 2152.13; R.C. 2152.14; R.C. 2945.67. You have appointed the assistant prosecuting attorney in question primarily to handle juvenile prosecutions. However, you indicate that the assistant may handle other matters, including those of both a civil and criminal nature, on occasion.

A city director of law serves as legal counsel to the officers, directors, and legislative authority of a municipal corporation. R.C. 733.51; R.C. 733.54. The director of law “is responsible for rendering legal opinions on questions of law submitted by city officers, including the legislative authority of the city, and representing the city in suits when requested by the legislative authority of the city.” 2016 Op. Att’y Gen. No. 2016-033, at 2-387. Significantly, “[t]he city director of law shall prepare all contracts, bonds, and other instruments in writing in which the city is concerned.” R.C. 733.51. The director of law, when required to do so by resolution of the legislative authority, is also responsible for prosecuting or defending all suits in which the city is a party. R.C. 733.53. Generally, directors of law prosecute all misdemeanors that occur within the boundaries of the law director’s municipal corporation in the appropriate municipal court. *See* R.C. 1901.34(A). As noted above, however, the Ottawa County Prosecuting Attorney is responsible for prosecuting all state crimes, including misdemeanors, which occur within the City of Port Clinton in Ottawa County Municipal Court. *See* R.C. 1901.34(B). Finally, territory may be annexed into the boundaries of a municipal

corporation; depending on the circumstances, inhabitants of a municipal corporation or the municipal corporation itself may petition the board of county commissioners to approve the annexation. *See* R.C. 709.01; *see also* R.C. 709.13-16. As legal counsel for the municipal corporation, the director of law represents the municipality in all proceedings related to the annexation of territory into the municipal corporation. Several other provisions in the Revised Code describe the powers and responsibilities of a city director of law. *See* 2016 Op. Att’y Gen. No. 2016-033, at 2-387 n.4 and 1989 Op. Att’y Gen. No. 89-023, at 2-109 n.2 (listing other duties of a city director of law).

Our review of the powers and responsibilities of the positions of assistant prosecuting attorney of Ottawa County and the elected, part-time Law Director of the City of Port Clinton reveals a number of potential conflicts of interest. These potential conflicts of interest include the following: serving on the county budget commission in place of the county prosecuting attorney; preparing or advocating for the tax budget of Ottawa County or the City of Port Clinton before the county budget commission; representing the City of Port Clinton in an annexation proceeding before the Ottawa County Board of Commissioners, a client of the prosecuting attorney; representing both parties in a contract between the City of Port Clinton and Ottawa County; and representing both parties in a legal proceeding involving the City of Port Clinton and Ottawa County. We consider, therefore, whether these conflicts of interest can be sufficiently mitigated or avoided entirely so as to render the two positions compatible. For the reasons that follow, we believe the potential conflicts of interest can be sufficiently mitigated or avoided so that one person may, under certain conditions and limitations, serve simultaneously as both assistant prosecuting attorney for Ottawa County assigned primarily to juvenile prosecutions and as the elected, part-time Law Director of the City of Port Clinton.

The first potential conflict of interest arises from the county prosecuting attorney’s membership on the county budget commission, R.C. 5705.28, and the competition among political subdivisions in a county for tax revenues before the budget commission. *See generally* R.C. Chapter 5705. Political subdivisions within each county are in competition with one another for tax revenues generated by the unvoted property tax, which are “those taxes that may be imposed within the ten-mill limitation.” 2016 Op. Att’y Gen. No. 2016-036, at 2-450.² The responsibility to decide the revenues that each political subdivision will receive from the unvoted property tax falls to the county budget commission. “The county budget commission is the agency of county government that is required to equalize the tax budgets of the county and the county’s political subdivisions to ensure that each political subdivision’s budget complies with the ten-mill limitation.” *Id.* The county prosecuting attorney is a member of the county budget commission. R.C. 5705.28. A political subdivision, through action of its taxing authority, is required to submit a tax budget to the county auditor, who then presents the tax budgets of each subdivision to the budget commission. R.C. 5705.28; R.C. 5705.31. The board of county commissioners is the taxing authority for the county while the

² *See* R.C. 5705.02 (“[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 on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the ‘ten-mill limitation’”).

legislative authority of a municipal corporation is the taxing authority for the municipality. R.C. 5705.01(C). Certainly, if the person were to serve as the prosecuting attorney's designee on the budget commission, that would present an impermissible conflict of interest because of the person's power to decide on the tax budget of the City of Port Clinton. Moreover, if the person were to prepare either the county's or city's tax budget, or advocate on behalf of either tax budget before the budget commission, that would also present a conflict of interest. We believe, however, that these potential conflicts of interest may be mitigated or avoided. You have not indicated that the assistant prosecuting attorney serves as your designee on the budget commission, and you have not indicated that the assistant is responsible for preparing or advocating for the county's tax budget before the budget commission. Similarly, nothing in the Revised Code requires a director of law to prepare or advocate for a municipality's tax budget before the county budget commission. Therefore, so long as the person does not serve as the prosecuting attorney's designee on the budget commission, or prepare or advocate for either political subdivision's tax budget before the budget commission, that person will not face a conflict of interest. As such, although the potential conflicts of interest relate to budgetary and financial matters, the conflicts may be avoided entirely if the person follows these restrictions. *See* 2016 Op. Att'y Gen. No. 2016-036, at 2-452.

The second potential conflict of interest arises from the possibility that territory in Ottawa County will be annexed into the boundaries of the City of Port Clinton. Pursuant to R.C. 709.01, territory in a county may be annexed into a municipal corporation. The annexation process follows the procedures outlined in R.C. Chapter 709. *See generally* R.C. Chapter 709 (describing annexation proceedings). During such annexation proceedings, the municipality may be represented by the director of law. *See* R.C. 733.51; R.C. 733.54. Depending on the type of annexation proceeding, a board of county commissioners may exercise a certain amount of discretion and deny the proposed annexation of territory. *See* R.C. 709.03; R.C. 709.033; *see also Tuscarawas Twp. v. Stark Cnty. Bd. of Comm'rs.*, 5th Dist. App. No. 2011CA00043, 2011-Ohio-5581, 2011 Ohio App. LEXIS 4559, at ¶ 23. Under certain circumstances, there may be a right to appeal the decision of the board of county commissioners to the court of common pleas in the county. R.C. 709.07(A); R.C. 2506.01(A). An assistant prosecuting attorney advising the board of county commissioners or representing the board on appeal would face an impermissible conflict of interest if the proceeding or appeal involved the City of Port Clinton. In addition, townships containing proposed annexation territory enjoy certain rights related to an annexation hearing. *See* R.C. 709.032 (a township may request the board of county commissioners to issue subpoenas to compel the attendance of witnesses or production of documents). The county prosecuting attorney represents statutory townships in his or her county. *See* R.C. 309.09(B)(1). Consequently, an assistant prosecuting attorney would face a similar conflict of interest if he or she represented a township in an annexation proceeding involving the City of Port Clinton.

However, we believe such situations are remote and speculative. If they arise, the conflicts of interest presented by those situations are avoidable. There is no indication that annexation proceedings involving the City of Port Clinton are forthcoming, and you have given no indication that the assistant prosecuting attorney would be assigned to represent the interests of the board of county commissioners or a township in such proceedings or on appeal. Therefore, so long as the assistant prosecuting attorney is not assigned to represent the board of county commissioners or a township

represented by the county prosecutor in annexation proceedings involving the City of Port Clinton, the assistant prosecutor faces no conflict of interest.

The third potential conflict of interest arises in light of the county's authority to contract with a municipal corporation and the Port Clinton Law Director's duty to prepare all contracts entered into by the city. *See* R.C. 307.15-.151; R.C. 733.51 (“[t]he city director of law shall prepare all contracts, bonds, and other instruments in writing in which the city is concerned”). For example, a board of county commissioners may enter into an agreement with a municipal corporation in the county “whereby the county dispatches the police officers, firemen, and emergency medical personnel of the municipal corporation.” 1995 Op. Att’y Gen. No. 95-004 (syllabus, paragraph 2). A board of county commissioners may also enter into an agreement with the legislative authority of a municipal corporation “for the enforcement of county local residential building regulations or an existing structures code within the boundaries of the municipal corporation.” 2016 Op. Att’y Gen. No. 2016-038 (syllabus, paragraph 4). Myriad other possible contractual arrangements between a county and municipal corporation exist. These possible contractual arrangements give rise to potential conflicts of interest if the assistant prosecuting attorney drafts or negotiates any contract between Ottawa County and the City of Port Clinton. A similar potential conflict of interest may arise if the assistant prosecuting attorney is assigned to draft, review, or negotiate a contract between a township represented by the county prosecutor and the City of Port Clinton. We are of the opinion, however, that such situations can be avoided if the assistant prosecutor is not assigned to draft, review, or negotiate, on behalf of Ottawa County or a township, any contracts involving the City of Port Clinton. You have indicated that, on occasion, the assistant prosecuting attorney is assigned to work on civil matters. By refraining from assigning the assistant prosecuting attorney to contractual matters involving the City of Port Clinton, conflicts of interest can be avoided.³

³ We perceive no conflict of interest in the assistant prosecuting attorney's handling of juvenile or criminal matters. As noted above, R.C. 1901.34(B) specifically directs the Ottawa County Prosecuting Attorney to prosecute all misdemeanors arising under state law in the Ottawa County Municipal Court. We have previously concluded that R.C. 1901.34(B) evidences the General Assembly's intent that a person may serve simultaneously as an assistant prosecuting attorney whose only duty is to prosecute criminal cases and as an assistant city law director whose only duty is to prosecute criminal cases in municipal court. 1988 Op. Att’y Gen. No. 88-086 (syllabus, paragraph 3); *see* 1987 Op. Att’y Gen. No. 87-093, at 2-607 (“R.C. 1901.34(B) lists certain county prosecutors who must prosecute all state law violations occurring in their respective counties”). We noted that “an assistant prosecuting attorney in some counties [including Ottawa County] may perform the duties of both the positions in question.” 1988 Op. Att’y Gen. No. 88-086, at 2-414. We further noted that “[b]y authorizing some assistant prosecuting attorneys to prosecute municipal court criminal cases, the General Assembly has indicated that no conflict of interest is involved or that other concerns override a potential conflict of interest.” *Id.* We are, therefore, of the opinion that there is no potential conflict of interest by the assistant prosecuting attorney handling criminal matters on behalf of the county prosecuting attorney, particularly in Ottawa County, in light of the requirement that the county

The final potential conflict of interest arises in the event Ottawa County and the City of Port Clinton are opposing parties in a legal proceeding other than a proceeding involving the annexation of territory into the city. “In such a situation, the individual could be placed in the untenable position of having to provide legal representation to different parties in the same case.” 1997 Op. Att’y Gen. No. 97-034, at 2-200. However, such situations appear unlikely to arise with frequency. “Moreover, it is only speculative whether the individual, as an assistant county prosecuting attorney, would be assigned by the county prosecuting attorney to represent” the county in such a proceeding. *See id.* In addition, the conflict of interest could be sufficiently mitigated if the City of Port Clinton hired outside counsel to represent the city in a legal proceeding involving Ottawa County as an opposing party. Accordingly, as long as the individual who holds the positions of assistant prosecuting attorney and Law Director of the City of Port Clinton does not represent the city in legal proceedings against an entity represented by the county prosecuting attorney, or represent an entity on behalf of the county prosecuting attorney, in legal proceedings against the city, the individual is not subject to an impermissible conflict of interest. *See id.*⁴

We have previously concluded that “when the duties of an assistant county prosecuting attorney are appropriately circumscribed so as not to conflict with the duties of another public position, the assistant may be able to avoid conflicts of interest that would otherwise prevent him from holding the other position.” 2004 Op. Att’y Gen. No. 2004-049, at 2-421. Moreover, in 2001 Op. Att’y Gen. No. 2001-027, at 2-155, we noted that

where the facts in a particular situation demonstrate that an assistant prosecuting attorney performs, on behalf of the prosecuting attorney, duties that are confined to certain categories of cases or matters, or certain clients of the prosecuting attorney, that in no way conflict with any of the duties and responsibilities the assistant undertakes in the other position, then the assistant may hold the other position even though the prosecuting attorney would otherwise be prohibited from serving in that position.

prosecutor shall prosecute all misdemeanors arising under state law in Ottawa County Municipal Court, including those misdemeanors that have occurred within the City of Port Clinton. *See* R.C. 1901.20(A)(1); R.C. 1901.34(B).

⁴ It is possible other potential conflicts of interest may exist. For example, a county prosecuting attorney is responsible for representing local school district boards of education, and municipal directors of law are responsible for acting as the legal adviser and attorney for the city school district board of education. *See* R.C. 3313.35. *Compare* R.C. 309.10 (a school board is not prevented from employing other counsel to represent it). We do not envision that such conflicts of interest will arise with regularity and, therefore, those potential conflicts of interest are remote and speculative. In any event, it is assumed that public officials will act in good faith and remove themselves from conflicting situations, where appropriate. *See State ex rel. Maxwell v. Schneider*, 103 Ohio St. 492, 498, 134 N.E. 443 (1921) (“[t]he action of a public officer[,] ... within the limits of the jurisdiction conferred by law, is not only presumed to be valid but it is also presumed to be in good faith and in the exercise of sound judgment”).

Accordingly, when the duties of an assistant prosecuting attorney are limited in scope, conflicts of interest between the positions of assistant prosecuting attorney and another position may be sufficiently mitigated or avoided, so long as the duties of the other position do not conflict with the assistant prosecutor's assigned responsibilities.

In short, although conflicts of interest between the positions of elected Law Director of Port Clinton and assistant prosecuting attorney of Ottawa County may arise, the conflicts can be sufficiently mitigated or avoided entirely. Therefore, we conclude that question five of the compatibility test may be answered in favor of compatibility.

The sixth question of the compatibility test asks whether any local charter provisions, resolutions, or ordinances prohibit the holding of the two positions. Whether any local charter provisions, resolutions, or ordinances apply is a matter of local concern. It is a fact-based question that local officials are best equipped to answer. *See* 2016 Op. Att'y Gen. No. 2016-036, at 2-444. We assume, for the purpose of this opinion, that no local charter provision, resolution, or ordinance prohibits a person's simultaneous service as the elected Law Director of Port Clinton and assistant prosecuting attorney of Ottawa County. On the basis of that assumption, the sixth question of the compatibility test may be answered in favor of compatibility.

The seventh and final question of the compatibility test asks whether any state, local, or Federal departmental regulations prohibit a person from serving simultaneously as elected, part-time Law Director of Port Clinton and full-time assistant prosecuting attorney of Ottawa County. Because there are no state, local, or Federal departmental regulations that are applicable to this situation, the final question may also be answered in favor of compatibility. Accordingly, having answered all seven questions of the compatibility test in favor of compatibility, we conclude that a person may serve simultaneously as the elected, part-time Law Director of Port Clinton and full-time assistant prosecuting attorney of Ottawa County assigned primarily to juvenile prosecutions, subject to the conditions provided in this opinion. It is important to note, however, that an assistant prosecuting attorney is an at-will employee who serves at the pleasure of the county prosecuting attorney. 1997 Op. Att'y Gen. No. 97-034, at 2-196; R.C. 124.11(A)(11). As such, although the position of assistant prosecutor may be compatible with certain elected positions, it is within the sound discretion of the county prosecuting attorney to permit or decline to permit an assistant prosecutor to seek elective office.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a person may serve simultaneously as the elected, part-time Law Director of the City of Port Clinton and full-time assistant prosecuting attorney of Ottawa County primarily assigned to juvenile cases and working approximately 35 hours per week, provided the person does not (1) serve as the county prosecuting attorney's designee on the county budget commission; (2) prepare the tax budget for either Ottawa County or the City of Port Clinton or advocate for either tax budget before the county budget commission; (3) participate in annexation proceedings involving the City of Port Clinton as assistant prosecuting attorney; (4) review, draft, or negotiate contracts entered into by

the City of Port Clinton and the Ottawa County Board of Commissioners or any entity represented by the county prosecuting attorney as assistant prosecuting attorney; or (5) represent the city in legal proceedings against an entity represented by the county prosecuting attorney or represent an entity on behalf of the county prosecuting attorney in legal proceedings against the city. (1997 Op. Att'y Gen. No. 97-034, approved and followed.)

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style with a large loop at the end of the last name.

DAVE YOST
Ohio Attorney General