

OPINION NO. 91-069**Syllabus:**

An individual may not hold simultaneously, within the same county, the positions of township liaison and township trustee.

To: Lynn Alan Grimshaw, Scioto County Prosecuting Attorney, Portsmouth, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

Introduction

The issue presented is whether an individual may hold simultaneously, within the same county, the positions of township liaison¹ and township trustee. 1979 Op. Att'y Gen. No. 79-111 sets forth seven questions for determining whether an individual may hold simultaneously two public positions. They are as follows:

1. Is either of the positions a classified employment within the terms of R.C. 124.57?
2. Do the empowering statutes of either position limit the outside employment permissible?
3. Is one office subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there a conflict of interest between the two positions?

¹ According to your letter, the individual is to be employed as a township liaison by the county engineer. See generally R.C. 325.17 (a county engineer "may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees"); R.C. 5543.19 (a county engineer may "employ such laborers ... as are necessary in the construction, reconstruction, improvement, maintenance, or repair of roads by force account"). Hence, for purposes of this opinion, the phrase "township liaison" refers to a person employed by the county engineer for the purpose of performing various duties on behalf of the county engineer.

6. Are there local charter provisions or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

Op. No. 79-111 at 2-367 and 2-368.

The fifth question, concerning conflicts of interest, is the determinative one in analyzing the compatibility of the two positions in question here. An individual may not hold simultaneously two public positions if, in so doing, he would be subject to an impermissible conflict of interest. 1990 Op. Att'y Gen. No. 90-083 at 2-355; 1989 Op. Att'y Gen. No. 89-101 at 2-489; 1989 Op. Att'y Gen. No. 89-072 at 2-328 and 2-329; *see also* 1985 Op. Att'y Gen. No. 85-042 at 2-150 ("[o]ne person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public"). A conflict of interest occurs 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." 1980 Op. Att'y Gen. No. 80-035 at 2-149; *see also* *Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344 (Ct. App. Butler County 1934) (a conflict of interest results when the duties of one position may be administered or discharged in such a way as to result in favoritism and preference being accorded the other position). An examination of the powers and duties of the respective positions at issue here indicates that an individual occupying both positions would be subject to an impermissible conflict of interest.

Duties Of A Township Trustee And Township Liaison

The responsibilities of a board of township trustees are delineated in R.C. Chapters 504 and 505, and various other sections located throughout the Revised Code. Trustees of townships are granted, in general, those powers and duties related to the government of the township. *See, e.g.*, R.C. 505.27 (a board of township trustees may provide, maintain, and operate facilities for, or contract for, the collection, transfer, and disposal of solid wastes); R.C. 505.37 (a board of township trustees may provide fire protection); R.C. 505.48 (a board of township trustees may provide police protection). *See generally* R.C. 504.04(A) ("[a] township that adopts the limited self-government form of government may ... [e]xercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws ... [and may] [a]dopt and enforce within the unincorporated area of the township such local police, sanitary, and other similar regulations as are not in conflict with general laws or otherwise prohibited by division (B) of this section").

A board of township trustees also has specific powers and duties concerning the construction, reconstruction, resurfacing, improvement, maintenance, and repair of roads situated within the boundaries of the township. *See, e.g.*, R.C. 5535.01(C) (a "board of township trustees shall maintain all [township] roads within its township"); R.C. 5571.01(A) (a "board of township trustees may construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction or any county road, intercounty highway, or state highway within its township"); R.C. 5571.02 (a "board of township trustees shall have control of the township roads of its township and shall keep them in good repair"); R.C. 5573.01 (when a "board of township trustees has determined that any road shall be constructed, reconstructed, resurfaced, or improved, such board shall determine by resolution, by unanimous vote if acting without a petition, and by a majority vote if acting upon a petition, the route and termini of such road, the kind and extent of the improvement, and at the same time shall order the county engineer to make such surveys, plans, profiles, cross sections, estimates, and specifications as are required for such improvement").

In this instance the township liaison is to be employed by the county engineer. *See* footnote one, *supra*. The general duties of a county engineer are as follows:

The county engineer shall perform for the county all duties

authorized or declared by law to be done by a registered professional engineer or registered surveyor, except those duties described in Chapters 343., 6103., and 6117. of the Revised Code. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, except buildings, constructed under the authority of any board within and for the county. The engineer shall not be required to prepare plans, specifications, details, estimates of costs, or forms of contracts for emergency repairs authorized under section 315.13 of the Revised Code, unless he deems them necessary.

R.C. 315.08.

In addition, a county engineer is also vested with certain responsibilities related to the construction, reconstruction, resurfacing, improvement, maintenance, and repair of roads located within townships. *See, e.g.*, R.C. 5541.01 (a county engineer may aid and assist the board of county commissioners in the preparation of blank forms and reports for the use of a board of township trustees in making its report concerning "the relative value of each road in the township in consecutive order as a used highway, the kind of traffic over such road, its length and present condition, together with such other information as may be desired and requested by the board of county commissioners"); R.C. 5541.03 (upon the application of a board of township trustees and the approval of the board of county commissioners, a county engineer shall make the necessary plans and estimates of cost for the construction, reconstruction, or improvement of any section of highway in the county system); R.C. 5543.01(B), R.C. 5543.09 (a county engineer shall supervise the construction, reconstruction, resurfacing, or improvement of roads by boards of township trustees); R.C. 5543.02 (a county engineer shall make an annual estimate for the board of township trustees of each township that sets forth the amount required by the township for the construction, reconstruction, resurfacing, or improvement of the public roads within their jurisdiction); R.C. 5543.10 (a county engineer, upon the order of a board of township trustees, "shall construct sidewalk of suitable materials, along or connecting the public highways, outside any municipal corporation"); R.C. 5571.05 (a county engineer shall supervise a board of township trustees or township highway superintendent in the maintenance and repair of roads); R.C. 5575.01 (a county engineer shall prepare an estimate of costs of work when a board of township trustees undertakes the construction or reconstruction of a township road); R.C. 5575.07 (the work of road improvement by a township shall be done under the general supervision of the county engineer). A county engineer and his employees, thus, have certain responsibilities with respect to the roads located within townships. *See, e.g.*, 1989 Op. Att'y Gen. No. 89-011 at 2-45 n.4.

According to information provided in your letter, the specific duties of the township liaison are as follows:

1. Liaison with Township Trustees
 - (a) Attend Meetings
 - (b) Co-ordinate Pipe and Sign Orders
 - (c) Co-ordinate Requests for Assistance
 - (d) Co-ordinate Annual Meeting
 - (e) Advise on Filling out [Paper Work] for Grants
2. Advisor of Revised Code Requirements to the Engineer.
3. Co-ordinate assignment of New Addresses to County Residents.
4. Co-ordinate applications of State, Federal and other Grant Monies available to Scioto County Engineer for Highway and Bridge use.
5. Help with courthouse work as required.
6. Other duties as assigned.

See generally R.C. 5543.06 ("[t]he county engineer shall annually call a meeting, within the county, at a time and place approved by the board of county

commissioners, of all the township and county authorities having directly to do with the construction and repair of roads and bridges within the county. At such meeting, which shall be open to the general public, the engineer, or his designee, shall instruct the proper authorities as to the best and most economical methods for repairing and maintaining the roads and bridges of the county, so as to provide a uniform system of highway work for such county").

Insofar as various provisions of law vest a board of township trustees and a county engineer with certain responsibilities related to the construction, reconstruction, resurfacing, improvement, maintenance, and repair of the roads located within a township, a county engineer and a board of township trustees are required to interact. See R.C. 5541.03; R.C. 5543.01; R.C. 5543.02; R.C. 5543.09; R.C. 5543.10; R.C. 5571.01; R.C. 5571.05; R.C. 5573.01; R.C. 5575.01; R.C. 5575.07; see also 1988 Op. Att'y Gen. No. 88-020. An individual who holds the position of township liaison, as you have described it, is thus responsible for monitoring, coordinating, and facilitating the movement of information related to the construction, reconstruction, resurfacing, improvement, maintenance, and repair of roads between the county engineer and the boards of township trustees.

Conflict Of Interest

Because the position of township liaison facilitates and coordinates the movement of information relating to the construction, reconstruction, resurfacing, improvement, maintenance, and repair of roads between the county engineer and the boards of township trustees, an individual serving simultaneously within the same county in the positions of township liaison and township trustee is exposed to influences that may prevent him from making completely objective, disinterested decisions. As a township trustee, the individual has both a greater interest in and responsibility toward matters concerning his own township than that of other townships within the county. He may also find himself subject to electoral pressures. See generally R.C. 505.01 (providing for the election of township trustees). Thus, the individual, as township liaison, may be inclined to give preference to the applications for grant moneys and requests for assistance, and to grant priority to the pipe and sign orders, of the township that elects him as a trustee. Hence, when an individual simultaneously holds within the same county the positions of township liaison and township trustee, a conflict of interest exists because that individual is subject to influences that may prevent him from discharging objectively and in a completely disinterested fashion the duties of the township liaison position.

That a conflict of interest exists, however, does not automatically prohibit the simultaneous holding of two public positions. 1989 Op. Att'y Gen. No. 89-052 at 2-220; Op. No. 79-111 at 2-372. Rather, each conflict of interest should be considered on its particular facts and where the conflict is remote and speculative, the conflict of interest rule is not violated. Op. No. 89-052 at 2-220; Op. No. 79-111 (syllabus, paragraph three). Factors to be considered in the determination of the immediacy of a conflict of interest include, *inter alia*, the remoteness of the conflict, the individual's ability to remove himself from the conflict, and whether the conflict involves the primary functions of each position. Op. No. 79-111 at 2-372; see *Esler v. Summit County*, 39 Ohio Misc. 2d 8, 10, 530 N.E.2d 973, 975 (C.P. Summit County 1985).

Application of these factors to the conflict of interest that results from the simultaneous holding of the two public positions about which you ask indicates that the positions are incompatible.² The competition among townships for grant moneys, assistance, and priority in the processing of paper work is one that arises regularly, since the construction, reconstruction, resurfacing, improvement, maintenance, and repair of roads are constant responsibilities for townships. Thus, the conflict presented concerns a primary function of each position. Since there are only three members of a board of township trustees, R.C. 505.01, and one township

² The syllabus of 1988 Op. Att'y Gen. No. 88-020 provides that "[a] township trustee who is not elected to that office in a partisan election may also be employed [by a county engineer] as a truck driver in the classified

liaison,³ it would, as a practical matter, be difficult for the individual in question to remove himself from the conflict by abstaining from all votes and discussions concerning the construction, reconstruction, resurfacing, improvement, maintenance, and repair of roads. I find, accordingly, that an individual who holds simultaneously, within the same county, the positions of township liaison and township trustee is subject to an impermissible conflict of interest.

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that an individual may not hold simultaneously, within the same county, the positions of township liaison and township trustee.

service of the county highway department." In reaching this conclusion my predecessor determined that the potential conflicts of interest that exist when an individual serves simultaneously in the positions of township trustee and employee of a county engineer do not render these positions incompatible.

Prior opinions of the Attorney General, however, have concluded that in determining the immediacy of a conflict of interest it is necessary to examine the particular powers and duties of each position. 1989 Op. Att'y Gen. No. 89-052 at 2-220; 1988 Op. Att'y Gen. No. 88-017 at 2-68. Op. No. 88-020, therefore, is not dispositive of the issue of the immediacy of the conflict of interest that exists between the positions of township liaison and township trustee.

³ You have indicated that the county engineer employs only one individual in the capacity of township liaison.