

June 3, 2016

Mr. Steven L. Johnson, Ph.D., President
Sinclair Community College
444 West Third Street
Dayton, Ohio 45402-1460

SYLLABUS:

2016-017

1. The position of Warren County member of the board of trustees of the Sinclair Community College District is compatible with the position of member of the Warren County Legal Resources Board.
2. The position of member of the Warren County Legal Resources Board is incompatible with the office of Warren County treasurer.
3. The position of Warren County member of the board of trustees of the Sinclair Community College District is incompatible with the office of Warren County treasurer.
4. An employee of the Warren County treasurer may serve simultaneously as a Warren County member of the board of trustees of the Sinclair Community College District or as a member of the Warren County Legal Resources Board provided that in his capacity as an employee of the county treasurer he does not participate in discussions, deliberations, negotiations, or decisions concerning matters of the Sinclair Community College District or the Warren County Legal Resources Board.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

June 3, 2016

OPINION NO. 2016-017

Mr. Steven L. Johnson, Ph.D., President
Sinclair Community College
444 West Third Street
Dayton, Ohio 45402-1460

Dear President Johnson:

We have received your request for an opinion whether a person may serve as the Warren County treasurer or as an employee of the Warren County treasurer while serving simultaneously as a Warren County member of the board of trustees of the Sinclair Community College District and a member of the Warren County Legal Resources Board. You explain that this person has served as a Warren County member of the board of trustees of the Sinclair Community College District since December 27, 2005, to which he was appointed by the Warren County board of commissioners, and his term expires July 8, 2017.¹ This person also serves as a member of the Warren County Legal Resources Board,² to which he was appointed by the Warren County Common Pleas Court judges, and his term expires December 31, 2017. He is a resident of Warren County and an attorney admitted to practice law in Ohio, maintaining a law practice in the area of estate planning and probate.

This person plans to seek election to the office of Warren County treasurer at the general election in November 2016. Should he be elected, his term will begin in September 2017. Additionally, prior to the election for county treasurer, he may take a position with the Warren County treasurer's office as an employee. Accordingly, you wish to know whether the positions of county treasurer or employee of the county treasurer are compatible with the positions of Warren County member of the board of trustees of the Sinclair Community College District and member of the Warren County Legal Resources Board. You also have inquired whether the position of Warren County member of the board of trustees of the Sinclair Community College District is compatible with the position of member of the Warren County Legal Resources Board.

¹ You further explain that this person is the sole Warren County member of the board of trustees of the Sinclair Community College District as the other Warren County member position is vacant, awaiting appointment by the Governor.

² This person has served as a member of the Warren County Legal Resources Board for approximately 15 years. The Warren County Legal Resources Board is a county law library resources board. *See* R.C. 307.51. *See also* Am. Sub. H.B. 420, 127th Gen. A. (2008) (eff. Dec. 30, 2008).

A seven-question test is used to determine whether a person may serve in multiple public positions:

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 employment in another public position or the holding of another public office?
3. Is one position 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 an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

2003 Op. Att’y Gen. No. 2003-010, at 2-69 to 2-70. “In order for two positions to be found compatible, all seven questions must be resolved in favor of compatibility.” 1989 Op. Att’y Gen. No. 89-052, at 2-218. To answer these questions, we need to understand the primary statutory duties and functions this person will have to carry out in each of the four positions in question.

Duties and Functions of a County Treasurer

A county treasurer is elected to serve a four-year term of office. R.C. 321.01. The powers, duties, and responsibilities of a county treasurer are numerous, and described throughout several chapters of the Revised Code. The general duties of the county treasurer are set forth in R.C. Chapter 321 and include, keeping accounts of all moneys received and disbursed, R.C. 321.07; receiving taxes and assessments, R.C. 321.08, R.C. 321.261, R.C. 323.07, R.C. 323.12, R.C. 323.132-.133, R.C. 323.14, R.C. 323.15; providing statements to the county auditor concerning the amount and crediting of taxes, R.C. 321.09-.10; redeeming warrants, R.C. 321.16; depositing redeemed warrants with the county auditor, R.C. 321.20; settling with the county auditor for all taxes and assessments, R.C. 321.24, R.C. 321.29; accepting liquidated claims and certificates, R.C. 323.02-.05; and enforcing tax liens, R.C. 323.25. The county treasurer is also authorized to appoint and employ necessary deputies, assistants, clerks, bookkeepers and other employees, and fix their compensation. R.C. 325.17.

The county treasurer serves as one of three members of the county budget commission, R.C. 5705.27, and the county board of revision, R.C. 5715.02. The county auditor and the county prosecuting attorney are the other members of the county budget commission. R.C. 5705.27. The county budget commission reviews annual tax budgets and information submitted by various subdivisions and taxing authorities within the county and revises and adjusts the estimates of balances and receipts from all sources for each fund within those tax budgets and information, certifies the estimated resources for each fund, and determines the total appropriations to be made from each fund. *See* R.C. 5705.31-.32; R.C. 5705.34; *see also* 2005

Op. Att’y Gen. No. 2005-002, at 2-18. The subdivisions or taxing authorities then authorize tax levies within and outside of the ten-mill limitation.

Duties and Functions of an Employee of the County Treasurer

Based upon the information provided by your staff to our office, as an employee of the county treasurer, this person anticipates working on various projects that may include, but are not limited to

gathering data and other information aimed at improving office operations; reviewing suppliers and providers of real estate tax billing services; attending meetings with the County Treasurer, such as Board of Revision, investment committee, and county treasurers’ association; “shadowing” each of the experienced office employees for the purpose of understanding the details of the office’s operations; and potentially making recommendations to the County Treasurer. However, employee duties would not include any duties performed by the Chief Deputy Treasurer.

Thus, this person will observe and participate in day-to-day operations and administrative tasks in preparation for serving as Warren County treasurer, and will make recommendations to the county treasurer. He will not undertake any of the chief deputy treasurer’s duties. As an employee of the county treasurer, he will be subordinate to the county treasurer.

Duties and Functions of a Warren County Member of the Board of Trustees of the Sinclair Community College District

A “community college district” is “a political subdivision of the state and a body corporate with all the powers of a corporation, comprised of the territory of one or more contiguous counties having together a total population of not less than seventy-five thousand preceding the establishment of such district, and organized for the purpose of establishing, owning, and operating a community college within the territory of such district.” R.C. 3354.01(A). R.C. 3354.25 sets forth provisions specific to the Sinclair Community College District. The Sinclair Community College District includes the entire territory of Warren County, which was added to the Montgomery County Community College District. *See* Am. Sub. H.B. No. 66, 126th Gen. A. (2005) (eff. Sept. 29, 2005). Accordingly, the Sinclair Community College District consists of two separate taxing subdistricts—Warren County and Montgomery County. R.C. 3354.25(B)(2).

The General Assembly has empowered the board of trustees of a community college district to own and operate a community college, receive and expend gifts or grants, employ persons necessary for operation of the college, provide land, buildings and other equipment, develop curriculum programs, establish a schedule of student fees and tuition, and prescribe rules for the operation of the community college as well as exercise such other powers as are necessary for the efficient management of the community college.

The board of trustees of the Sinclair Community College District created by R.C. 3354.25 consists of eleven members. R.C. 3354.25(C). Nine members of the board of trustees shall be residents of Montgomery County, R.C. 3354.25(C)(1), and two members of the board of trustees shall be residents of Warren County, R.C. 3354.25(C)(2). The Warren County board of commissioners appoints one of the two Warren County members of the board of trustees, and the Governor, with the advice and consent of the Ohio Senate, appoints the other Warren County member of the board of trustees. R.C. 3354.25(C)(2). After the initial term, each Warren County member of the board of trustees is appointed for a five-year term. *Id.*

R.C. 3354.25(C)(1) specifies that the initial Montgomery County members of the board of trustees of the Sinclair Community College District shall be the same members of the board of trustees of the former community college district of Montgomery County, as it existed prior to September 29, 2005, and upon expiration of their terms, the successors shall be appointed as they would have otherwise under R.C. 3354.05(B). R.C. 3354.05(B) provides that

[a]t the expiration of each of the three terms appointed by the Governor, and thereafter, the Governor shall make appointments, with the advice and consent of the [Ohio] Senate. At the expiration of each of the remaining six terms, and thereafter, the board of county commissioners ... shall make appointments. [T]he successive terms of trustees shall be for five years[.]

R.C. 3354.25(E)(1)(a)-(c) prohibit the trustees of each subdistrict of the Sinclair Community College District from voting on tax levies, the expenditure of revenue from tax levies, and levy-subsidized tuition rates, pertaining to the other county, unless specific conditions are met. These constraints shall apply until the electors of Warren County approve a tax levy equivalent to the Montgomery County levy in effect for the former community college district prior to the effective date of R.C. 3354.25, and such levy is maintained. *See* R.C. 3354.25(F)(1)-(2). Thus, the Warren County members of the board of trustees of the Sinclair Community College District shall not vote on tax levies, the expenditure of revenue from tax levies, and levy-subsidized tuition rates pertaining to Montgomery County. The Montgomery County members of the board of trustees of the Sinclair Community College District shall not vote on tax levies, the expenditure of revenue from tax levies, and levy-subsidized tuition rates pertaining to Warren County until an appropriately equivalent tax levy, as defined in R.C. 3354.25(F), is in effect in Warren County.

Despite the foregoing restrictions, the entire membership of the board of trustees of the Sinclair Community College District shall vote “on any matter related to community college programming or facilities within one county or the other[.]” *See* R.C. 3354.25(E)(3)(a)-(b). At present, a Warren County tax levy for support of the Sinclair Community College District is not in effect nor is there a proposal or ballot issue for such a levy. Hence, the voting restrictions of R.C. 3354.25(E)(1)(a)-(c) are in force so that any matters pertaining to Warren County that are covered by the restrictions may be decided only by action of the Warren County members of the board of trustees of the Sinclair Community College District.

Duties and Functions of a Member of the Warren County Legal Resources Board

R.C. 307.51(B) declares that a county law library resources board “shall provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county and shall manage the coordination, acquisition, and utilization of legal resources” subject to appropriations pursuant to R.C. 307.513. The board consists of five members, each appointed for a period of five years. R.C. 307.51(B); R.C. 307.511(D). A member of a county law library resources board has duties that include making policy and adopting rules for the expenditure of moneys, R.C. 307.51(D)(1)(a), access to and hours of operation of the county law library, R.C. 307.51(D)(1)(b), preparation of an annual budget, R.C. 307.513(A), and employment of a county law librarian and staff, R.C. 307.51(C).

Application of R.C. 124.57

The first question of the compatibility analysis concerns the application of R.C. 124.57, and asks whether a particular position, whether an office or employment, is in the classified service for purposes of R.C. 124.57. R.C. 124.57(A) provides, in part:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state 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 state, the several counties, cities, and city school districts of the state, or the civil service townships of the state 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 ... prohibits a classified employee from holding a partisan elective office or engaging in partisan political activities, but does not apply to non-partisan elective offices.” 1989 Op. Att’y Gen. No. 89-022, at 2-101. Thus, we must determine whether the positions of county treasurer, employee of a county treasurer, member of a board of trustees of a community college district, or a member of a county law library resources board are in the classified civil service, and thus subject to R.C. 124.57’s prohibition.

The position of a county treasurer is in the unclassified service, as the county treasurer is an elected position. See R.C. 321.01; R.C. 124.11(A)(1) (the unclassified service comprises “[a]ll officers elected by popular vote”). The civil service classification for an employee of the county treasurer will depend, *inter alia*, upon whether the employee has a fiduciary or administrative relationship with the county treasurer. R.C. 124.11(A)(9) recognizes that “those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator, and the employees of such county officials whose fitness would

be impracticable to determine by competitive examination” are unclassified civil service employees. “A ‘fiduciary relationship’ is one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust Where no discretion is involved and where tasks are clearly routine, a fiduciary relationship clearly does not exist.” *Yarosh v. Becane*, 63 Ohio St. 2d 5, 11, 406 N.E.2d 1355 (1980). “One method of determining whether a fiduciary relationship exists in an employment situation is to examine the duties assigned to an employee.” *State ex rel. Charlton v. Corrigan*, 36 Ohio St. 3d 68, 71, 521 N.E.2d 804 (1988); *see also Rarick v. Bd. of Cty. Comm’rs*, 63 Ohio St. 2d 34, 37, 406 N.E.2d 110 (1980) (“[d]uties which are closely supervised by the appointing authority do not place a position in a fiduciary or administrative relationship with the authority; no special confidence and trust in an employee’s abilities and integrity is involved”). The duties and responsibilities to be entrusted by the county treasurer to this person are the kind that require him to exercise discretion, judgment, and skill. These qualities typically are indicative of a position in which the employee has a fiduciary relationship to his appointing authority. Therefore, for the purpose of this opinion, we will presume that the position of employee of the county treasurer involved in your inquiry is fiduciary in nature, and thus, is in the unclassified civil service.

R.C. 124.57 applies to all officers and employees “in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state.” It does not explicitly refer to officers and employees in the service of a community college district. R.C. 3354.03 provides that:

[a] community college district organized pursuant to [R.C. 3354.02] shall be a political subdivision of the state and a body corporate with all the powers of a corporation, existence, with power to sue and be sued, to incur debts, liabilities, and obligations, to exercise the right of eminent domain and of taxation and assessment as provided in [R.C. 3354.01-.18], to issue bonds, and to do all acts necessary and proper for the carrying out of the purposes for which the district was created and for executing the powers with which it is invested.

See also R.C. 3354.01(A); *Farra v. Sinclair Cmty. Coll.*, Ct. of Cl. No. 2005-10411-AD, 2006-Ohio-1019 (“the community college, is not an arm of the state; rather it is a political subdivision”). The members of the board of trustees of the Sinclair Community College District are not in the service of the state or a county, city, city school district, or civil service township. Rather, the members of the Sinclair Community College District board of trustees serve a distinct and separate political subdivision, a community college district. Employment other than with the state or one of the political subdivisions named in R.C. 124.57 is not subject to R.C. 124.57’s proscriptions. Thus, R.C. 124.57 does not apply to members of a board of trustees of a community college district.

A county law library resources board member’s responsibilities include determinations regarding access to and operation of the county law library, budgetary and fiscal matters, and employment of a librarian and other necessary employees. These responsibilities are imbued

with a significant degree of discretion and judgment, which make the board members fiduciaries to their appointing authorities. Consequently, a member of a county law library resources board is within the unclassified civil service. *See* 2011 Op. Att’y Gen. No. 2011-024, at 2-198 (“fiduciary duties suggest that the position of a member of a [county law library resources board] is within the unclassified civil service [of the county]”); 2009 Op. Att’y Gen. No. 2009-049, at 2-368 (“[n]either the position of assistant county prosecuting attorney nor member of the county law library resources board is in the classified civil service”); *see also* 1991 Op. Att’y Gen. No. 91-011, at 2-59 (“[p]ositions, generally, are placed in the unclassified service because they involve policy-making or fiduciary responsibility”). R.C. 124.57’s prohibitions, therefore, do not apply to a member of a county law library resources board.

None of the positions described in your letter are within the classified civil service, and so the prohibitions set forth in R.C. 124.57 do not apply. R.C. 124.57 does not operate to prevent a person from holding these several positions simultaneously.

Constitutional and Statutory Limitations on Holding Multiple Positions and Other Applicable Federal, State, and Local Prohibitions

For ease of discussion, we will address the second, sixth and seventh questions of the compatibility analysis together. The second question of the compatibility analysis asks whether the empowering statutes of any of the positions limit the simultaneous holding of other public employment or another public office. Holding another position may also be prohibited by the Ohio Constitution. 2004 Op. Att’y Gen. No. 2004-051, at 2-437. The sixth and seventh questions concern the applicability of local charter provisions, resolutions, or ordinances and federal, state, and local regulations that prohibit the simultaneous holding of several positions.

R.C. 3.11 provides that “[n]o person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, and probate judge.” Should this person be elected Warren County treasurer, he will be prohibited by R.C. 3.11 from serving simultaneously as sheriff, county auditor, clerk of the court of common pleas, county recorder, prosecuting attorney, or probate judge. The positions of member of a board of trustees of a community college district or member of a county law library resources board are not among the named positions in R.C. 3.11. Thus, R.C. 3.11 does not prohibit a person from serving at the same time as county treasurer, member of a board of trustees of a community college district, and member of a county law library resources board. We are not aware of any other statutory or constitutional provisions that prohibit a person from serving simultaneously as member of a board of trustees of a community college district, member of a county law library resources board, county treasurer, and employee of the county treasurer.

We further find no state or federal regulation prohibiting a person from simultaneously serving in the positions in question. Although these positions are not part of the federal government, if any of the positions should receive, administer, or are in some way accountable for federally-sourced moneys, there may be applicable federal regulations.³ Additionally, “whether there is an applicable local charter provision, resolution, ordinance, or departmental regulation which prohibits a person from concurrently holding these two positions is a question for [local] officials to answer.” 2004 Op. Att’y Gen. No. 2004-051, at 2-434. A community college district board of trustees or a county law library resources board has the authority to adopt rules or regulations. *See* R.C. 3354.06 (“[t]he board of trustees of a community college district may adopt rules and regulations governing its own proceedings”); R.C. 307.51(D)(1) (“[t]he [county law library resources] board may adopt any rules it considers necessary for its operation”). We are not aware of rules or regulations adopted by the Sinclair Community College District board of trustees or the Warren County Legal Resources Board that limit the simultaneous holding of these public positions. Thus, it is assumed, for the purpose of this opinion that no local charter provisions, resolutions, ordinances, or departmental regulations apply to the simultaneous holding of these four positions.

Physical Ability to Discharge Duties

The fourth question of the compatibility analysis asks whether it is physically possible for one person to simultaneously hold two positions and fully perform all of the duties required of each position. “This is a factual question that is best resolved by the interested local officials since they may more precisely determine the time constraints and demands [of each position] imposed upon the person[.]” 2004 Op. Att’y Gen. No. 2004-051, at 2-438. In resolving this

³ Pursuant to 5 U.S.C.A. § 1502(a)(3), commonly known as the Hatch Act, a state or local officer or employee may not be a candidate for elective office if that officer or employee’s salary is paid completely, directly or indirectly, by federal loans or grants. So long as a person’s compensation as an employee of the county treasurer is not paid entirely with federal loan or grant money, the Hatch Act will not prevent him serving as a county treasurer employee or seeking election to the office of the county treasurer. A member of a board of trustees of a community college district and a member of a county law library resources board do not receive compensation for their service. *See* R.C. 3354.06 (the board of trustees of a community college district shall serve without compensation, but may be paid for their necessary expenses when engaged in the business of the board); 2010 Op. Att’y Gen. No. 2010-014 (syllabus) (“[a]bsent express statutory authority, individual members of a county law library resources board are not permitted to receive compensation for their service on the board”). We are otherwise unable to determine whether a person that serves in these positions administers or is in some way accountable for federal moneys.

inquiry, “a person must be certain that he will be able to carry out the duties of both positions in a competent and timely manner.” *Id.*, at 2-439. Thus, if there is a direct conflict between the times when the person is needed to perform duties in each position, the two positions are incompatible.

This person has served as a Warren County member of the board of trustees of the Sinclair Community College District and as a member of the Warren County Legal Resources Board while engaging, at the same time, in a private legal practice. It thus appears that these two public positions do not require him to devote all of his time and energies to the responsibilities of the boards. *See, e.g.*, R.C. 307.512 (“the [county law library resources] board shall meet at least four times a year, as determined by the chairperson or at any other time as determined by a majority of the board”). R.C. 321.01 states that a treasurer shall be elected in each county. There is no statutory requirement that establishes a standard work week with a minimum number of hours for the office of county treasurer. *See, e.g.*, 1965 Op. Att’y Gen. No. 65-106 (syllabus, paragraph one) (“[t]here is no authority in law which provides for the number of hours which public offices must be open. This decision is left to the discretion of the individual office holders”); 1943 Op. Att’y Gen. No. 6048, vol. I, p. 236 (syllabus) (“[c]ounty commissioners of a county have no authority to fix a uniform time for the opening and closing of the various county offices”). No provision of law mandates that a county treasurer devote all his time to his treasurer duties to the exclusion of all other pursuits, be they public or private. This person and his appointing authorities should evaluate the time demands of each position and how the constraints on time may affect his performance in each position to determine whether it is physically possible for him to hold more than one position simultaneously. Each position requires a certain amount of time to complete the various responsibilities of each position, and the more positions held, the greater the expenditure of time necessary by the person. Even if there is not a direct conflict between the time demands of each position, this person may need to consider his ability to conduct and complete the necessary tasks associated with each position in a timely and competent manner. Additionally, if this person is required to be available during the hours in which he is working as an employee of the county treasurer, he must use approved leave commensurate with the amount of time in which he is absent from his duties as an employee of the county treasurer. *See* 2011 Op. Att’y Gen. No. 2011-008, at 2-60.

Subordination and Control

The third question of the compatibility analysis asks whether either position is subordinate to or under the control of the other position or whether either position is a check upon the other. First, we will address the positions of member of the Warren County Legal Resources Board and Warren County member of the board of trustees of the Sinclair Community College District. Thereafter, we will address the positions of Warren County member of the board of trustees of the Sinclair Community College District and the Warren County treasurer.

A. Member of the Warren County Legal Resources Board and Warren County Member of the Board of Trustees of the Sinclair Community College District

A member of the five-member county law library resources board is appointed by either the prosecuting attorney of the county, the administrative judges or presiding judges of all municipal courts and county courts within the county, the administrative or presiding judge of the court of common pleas of the county, or the board of county commissioners. *See* R.C. 307.511(A)(1)-(5). The Warren County board of commissioners and the Governor, with the advice and consent of the Ohio Senate, each appoint one Warren County member of the board of trustees of the Sinclair Community College District. *See* R.C. 3354.25(C)(2). We understand that this person was appointed to the Warren County Legal Resources Board by the judges of the Warren County Court of Common Pleas and to the board of trustees of the Sinclair Community College District by the Warren County board of commissioners. In his capacity as member of the Warren County Legal Resources Board and Warren County member of the board of trustees of the Sinclair Community College District, he is responsible to different appointing authorities. Each board acts independently within their respective areas of responsibility and neither exercises supervision or oversees the operations of the other. Thus, the positions of member of the Warren County Legal Resources Board and Warren County member of the board of trustees of the Sinclair Community College District are not subordinate to or a check upon each other.

B. Warren County Member of the Board of Trustees of the Sinclair Community College District and the Office of Warren County Treasurer

We now turn to the position of Warren County member of the board of trustees of the Sinclair Community College District and the office of Warren County treasurer. R.C. 3354.03 states that, as a political subdivision, a community college district has the power, *inter alia*, to exercise the right “of taxation and assessment as provided in [R.C. 3354.01-.18], to issue bonds, and to do all acts necessary and proper for the carrying out of the purposes for which the district was created and for executing the powers with which it is invested.” *See* R.C. 3354.12(A) (“[u]pon the request by resolution approved by the board of trustees of a community college district, ... the boards of elections of the county or counties comprising such district shall place upon the ballot in their respective counties the question of levying a tax on all the taxable property in the community college district outside the ten-mill limitation”); R.C. 3354.11 (“[a] community college district may submit to the electors of the district pursuant to [R.C. Chapter 133] the question of issuing bonds of such district”). Pursuant to R.C. 3354.01(A) and R.C. 3354.03, the Sinclair Community College District is a political subdivision of the State of Ohio. *See Farra v. Sinclair Cmty. Coll.*, Ct. of Cl. No. 2005-10411-AD, 2006-Ohio-1019. The Sinclair Community College District is divided into two separate taxing subdistricts, one consisting of the territory of Warren County, and another consisting of the territory of Montgomery County. *See* R.C. 3354.25(B)(2). The Warren County members of the board of trustees are authorized to propose a tax levy outside of the ten-mill limitation for the Warren County subdistrict of the

Sinclair Community College District.⁴ See R.C. 3354.12; R.C. 3354.25(G)(2)-(3). Only the Warren County members of the board of trustees, and not the Montgomery County members of the board of trustees, are authorized to propose a levy to the electors of Warren County pursuant to the voting restrictions provided in R.C. 3354.25(E)(1) until a Warren County tax levy as defined in R.C. 3354.25(F) is in effect.

As a taxing authority, the board of trustees of a community college district “shall adopt a tax budget for the next succeeding fiscal year ... [o]n or before the fifteenth day of July[.]” R.C. 5705.28(A)(2). The tax budget is submitted to the county auditor, R.C. 5705.30, who in turn, presents the annual tax budgets to the county budget commission. R.C. 5705.31. The county budget commission, which includes the county treasurer as one of its three members, reviews the tax budgets submitted by all the subdivisions and taxing authorities within the county, and shall determine whether levies in excess of the ten-mill limitation are properly authorized.⁵ If properly authorized, the county budget commission shall approve the levies. See R.C. 5705.31.

⁴ Article XII, Section 2 of the Ohio Constitution provides as follows:

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation.

This provision underlies the distinction between “inside millage” and “outside millage.” A “mill,” meaning “one one-thousandth,” is a rate of tax imposed upon the taxable value of property. Taxable value is 35 percent of the true value (also known as the market value) of the property. See 16B Ohio Admin. Code 5703-25-05(B). One mill is one one-thousandth of the taxable value, considered as the amount of tax to be paid so that ten mills equal one percent of the taxable value. Article XII, Section 2 of the Ohio Constitution allows property to be subjected to a rate of ten mills without voter approval, also known as inside millage. Outside millage is a request for taxes upon property in excess of the first ten mills and requires voter approval. See *Sanborn v. Hamilton Cty. Budget Comm’n*, 142 Ohio St. 3d 20, 2014-Ohio-5218, 27 N.E.3d 498, at ¶¶ 5-7.

⁵ “The county budget commission is required to ascertain that the levies identified in divisions (A) through (E) of R.C. 5705.31 ‘have been properly authorized and, if so authorized, shall approve them without modification.’” 2016 Op. Att’y Gen. No. 2016-012, slip op. at p. 5. R.C. 5705.31 states that “[d]ivisions (A) to (E) of this section are mandatory and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions.” The levies identified in R.C. 5705.31(A)-(E) are as follows:

(A) All levies in excess of the ten-mill limitation;

In 1964 Op. Att’y Gen. No. 1305, p. 2-349 (syllabus), the Attorney General determined that “[t]he office of county treasurer is incompatible with the office of treasurer of a community college district created by and operating under [R.C. Chapter 3354] and the two positions may not be held by the same person at the same time.” The opinion acknowledges that while the treasurer of the community college district is not a member of the board of trustees of the community college district, “he most certainly would be intimately involved in and partly responsible for the preparation, submission, and support of such a budget as the district’s treasurer and fiscal officer.” *Id.*, at 2-351; *see* R.C. 3354.06 (“[t]he board [of trustees of a community college district] shall elect a secretary and a treasurer of the community college district, to serve at its pleasure, who are not members of the board.... The treasurer of the community college district shall be its fiscal officer and shall receive, and at the direction of the board of trustees, disburse all funds of the district”). The opinion further recognizes that a county budget commission is required to approve levies in excess of the ten-mill limitation *if* the levies are properly authorized. The Ohio Supreme Court in *State ex rel. Bd. of Cnty. Comm’rs of Lucas Cnty. v. Austin*, 158 Ohio St. 476, 480, 110 N.E.2d 134 (1953), referred to the General Assembly’s definition of “properly authorized” in G.C. 5625-23, now R.C. 5705.31(A):

‘Properly authorized’ ... means that such tax is one which the taxing authority had the power to impose, either by its own action or by vote of the people, and that the enactment of the measure imposing the tax was in compliance with statutory requirements.

In *Vill. of S. Russell v. Budget Comm’n of Geauga Cnty.*, 12 Ohio St. 3d 126, 132, 465 N.E.2d 876 (1984), the court again approved the language of the former statute defining “properly authorized” and recognized that in determining whether a levy is “properly authorized” under R.C. 5705.31, a county budget commission must determine that the tax rate is “clearly required by the [tax] budget” set forth in R.C. 5705.341, that the levy will not generate funds in excess of

(B) All levies for debt charges not provided for by levies in excess of the ten-mill limitation, including levies necessary to pay notes issued for emergency purposes;

(C) The levies prescribed by [R.C. 742.33(B)] and [R.C. 742.34(B)];

(D) [A] minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing unit, which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen-mill limitation to such subdivision or taxing unit during the last five years the fifteen-mill limitation was in effect unless such subdivision or taxing unit requests an amount requiring a lower rate. . . .

....

(E) The levies prescribed by [R.C. 3709.29].

anticipated, budgeted expenses, and that the resulting tax revenues are budgeted in accordance with the will of the electorate. Thus, a county budget commission has a mandatory obligation to approve levies outside the ten-mill limitation upon a determination that the levies have been properly authorized as provided in R.C. 5705.31 and the taxing authorities have complied with the procedures in R.C. 5705.31-.341. The Attorney General in 1964 Op. Att’y Gen. No. 1305, at 2-351 cautioned that:

in reviewing the tax levy proposed by the community college district, it would be incumbent upon the county treasurer to disapprove such a levy if it was not properly authorized while at the same time he would be bound by loyalty to the board of trustees of the community college district ... to support the tax levy.

The present inquiry asks whether a Warren County member of the board of trustees of the Sinclair Community College District, rather than its treasurer, also may serve as county treasurer in Warren County. A member of the board of trustees of the Sinclair Community College District is responsible for requesting a tax levy and preparing a tax budget for the Sinclair Community College District. The treasurer of Warren County is a member of the Warren County budget commission. In that capacity he is required to determine whether a tax levy requested by the board of trustees of the Sinclair Community College District is properly authorized. Thus, in his service as a member of the Warren County budget commission, the Warren County treasurer acts as a check upon the Warren County members of the board of trustees of the Sinclair Community College District.⁶ *See also* 2003 Op. Att’y Gen. No. 2003-

⁶ Even if the Warren County treasurer did not serve as a check upon the Warren County members of the board of trustees of the Sinclair Community College District, the determination whether a tax levy proposed by the board of trustees is “properly authorized” would present a conflict of interest for the Warren County treasurer that could not be mitigated. For the Warren County treasurer to avoid this conflict of interest in his service as a Warren County member of the board of trustees of the Sinclair Community College District, he would need to remove himself from all board discussions, deliberations, decisions, or votes regarding the proposed tax levy. *See* 2006 Op. Att’y Gen. No. 2006-022, at 2-197 (“[i]n order to faithfully perform the duties of his office, a public officer must refrain from acting in situations where he has a conflict of interest”); *see generally* 2003 Op. Att’y Gen. No. 2003-006, at 2-37 and 2-38 (in a matter in which the objectivity of a public officer is impaired, the officer has a duty to abstain from participating in the matter).

However, because no Warren County tax levy is in effect at this time, the voting restrictions of R.C. 3354.25(E)(1) apply, and a proposal for a Warren County tax levy would have to be determined by the two Warren County members of the board of trustees of the Sinclair Community College District. As there are only two Warren County board members who can propose a levy outside the ten-mill limitation while the voting restrictions are in place, a Warren County member of the board of trustees who withdraws to remove himself from the conflict creates a deadlock, precluding the remaining Warren County member of the board of trustees from efficiently conducting the Sinclair

015, at 2-115 (“[b]ecause a board of health is required to inspect work performed by a village administrator and issue orders requiring an administrator to take any corrective action that the board deems necessary, the board is a check upon the position of village administrator” rendering the positions incompatible); 2002 Op. Att’y Gen. No. 2002-005, at 2-25 (“the county auditor is a check upon any official of a county workforce development agency who is responsible for depositing, disbursing, managing, or accounting for the moneys of the agency” and thus, these two positions are incompatible).

This means that the office of Warren County treasurer is incompatible with the position of Warren County member of the board of trustees of the Sinclair Community College District. *See* 1981 Op. Att’y Gen. No. 81-079, at 2-311 (“[i]n order for the positions at issue to be compatible, each of the seven questions must be answered in the negative. An affirmative answer to even one of the seven questions compels a conclusion that the positions are incompatible”).

Conflicts of Interest

The fifth question asks whether a conflict of interest exists when one person serves simultaneously in two positions. 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). A person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or be exposed to the temptation of acting other than in the best interest of the respective agencies or offices he serves. 2000 Op. Att’y Gen. No. 2000-025, at 2-168.

That a conflict of interest may exist between two positions does not necessarily mean that a person is prohibited from holding them at the same time. 1998 Op. Att’y Gen. No. 98-033, at

Community College District’s business. Without a quorum, the remaining Warren County member of the board of trustees of the Sinclair Community College District may not act. *See* 2006 Op. Att’y Gen. No. 2006-022, at 2-199 (“a single trustee does not constitute a majority of the quorum and may not act as the board of trustees”); *see also State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d 47, 48, 212 N.E.2d 604 (1965) (“[a] single member does not constitute a board and, unless authorized by statute, cannot act as the board”). Withdrawal or abstention from certain matters by this person as a Warren County member of the board of trustees of the Sinclair Community College District is not a practical way to avoid or eliminate the conflict of interest. Thus, the position of Warren County member of the board of trustees of the Sinclair Community College District is incompatible with the office of Warren County treasurer.

2-189; *see also State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d 96, 99, 206 N.E.2d 563 (1965) (possibility of conflict of interest is insufficient to oust a duly elected public official from office). Rather, whether a conflict of interest is impermissible, in the sense that it makes two positions incompatible, depends upon several factors:

[i]f our review discloses such conflicts, we must next determine the immediacy of the conflicts to see whether the conflicts may be sufficiently avoided or eliminated entirely so as to allow the person to serve simultaneously in both positions. 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.

2006 Op. Att’y Gen. No. 2006-010, at 2-86 to 2-87. We now examine the potential conflicts of interest with respect to the several positions, and if conflicts of interest exist, whether they can be mitigated.

A. Warren County Member of the Board of Trustees of the Sinclair Community College District and Member of the Warren County Legal Resources Board

A conflict of interest will arise if the board of trustees of the Sinclair Community College District and the Warren County Legal Resources Board contract with each other.⁷ The Attorney General has advised that “a person may not hold positions of trust on two public entities that contract with each other.” 2002 Op. Att’y Gen. No. 2002-039, at 2-252. Your letter of inquiry indicates that neither entity has contracted with the other since this person began serving as a Warren County member of the board of trustees of the Sinclair Community College District in 2005. It is only speculative whether the board of trustees of the Sinclair Community College District and the Warren County Legal Resources Board will enter into a contract with one another, particularly since the history indicates they have not done so for over ten years. This conflict of interest is sufficiently remote and speculative to render the positions of Warren County member of the board of trustees of the Sinclair Community College District and member of the Warren County Legal Resources Board compatible.

B. The Office of Warren County Treasurer and Member of the Warren County Legal Resources Board

⁷ *See* R.C. 307.51(F) (subject to the approval of the board of county commissioners, a county law library resources board may contract with other public or private entities for the provision of services that the county law library resources board considers necessary); R.C. 3354.09 (powers of the board of trustees of a community college district).

A staff advisory opinion issued by the Ohio Ethics Commission in this matter concludes that this person is precluded from serving as Warren County treasurer and member of the Warren County Legal Resources Board. The advisory opinion concludes that this dual service will create a conflict of interest that contravenes R.C. 102.03(D).⁸ This staff advisory opinion renders the positions of Warren County treasurer and member of the Warren County Legal Resources Board incompatible.

The potential for a conflict of interest also exists based upon a county treasurer's duties as a member of the county budget commission. A county law library resources board is a county agency. 2010 Op. Att'y Gen. No. 2010-014, at 2-94. R.C. 307.514 has created in each county treasury a county law library resources fund to receive revenue,⁹ in part, from appropriations from the county general fund. R.C. 307.513(B). The county treasurer is responsible for receiving and disbursing appropriations for the county law library resources fund as well as appropriations from the general fund that will be utilized by the county law library resources board. *See* R.C. 307.514.

A county law library resources board shall submit annually an estimate of the board's revenue and expenditures to the board of county commissioners. R.C. 307.513(A); *see also* 2010 Op. Att'y Gen. No. 2010-014, at 2-95. The budget shall include an estimate of expenses sufficient to provide for the operation of the county law library resources board, an estimate of revenue that specifies the source of the revenue, and a specific request for monies to be appropriated to the county law library resources fund from the county general fund for the ensuing fiscal year. *See* R.C. 307.513(A). Expenditures from the county law library resources fund shall be made pursuant to the annual appropriation measure adopted by the board of county commissioners. *See* R.C. 5705.38. To assist in the preparation of the tax budget, the head of each department or board entitled to participate in any appropriation or revenue of a subdivision shall file an estimate of the contemplated revenue and expenditures for the ensuing fiscal year.

⁸ R.C. 102.03(D) provides that:

[n]o public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

A violation of R.C. 102.03(D) is a misdemeanor of the first degree. *See* R.C. 102.99(B).

⁹ Other revenues that are deposited in the county law library resources fund are fees from services and donations, R.C. 307.51(D)(1)(c)-(d); fines, penalties, and forfeited bail, R.C. 307.515(A); and gifts or bequests from any person, firm, or corporation. *See* R.C. 307.514.

R.C. 5705.28(C)(1). A county law library resources board is required to file such an estimate of revenue and expenditures with the board of county commissioners. The tax budget of a county law library resources board is one of many tax budgets submitted to the board of county commissioners and incorporated in the tax budget of the county.

The county budget commission examines each political subdivision's tax budget submitted to the commission and ascertains the total amount proposed to be raised in the county for purposes of each subdivision and the taxing units therein. *See* R.C. 5705.31. Thereafter, the county budget commission may "revise and adjust the estimate of balances and receipts from all sources for each fund" within each subdivision's tax budget. R.C. 5705.32. Based on the revised and adjusted estimates, the county budget commission adjusts all the levies of the county within the limits of the law. "In general, by way of R.C. 5705.32, the [county budget] commission is permitted to adjust estimated amounts required from the general property tax for each fund as shown by the budgets so as to bring the tax levies within the limitations specified under R.C. 5705.01 to 5705.47." *Vill. of S. Russell v. Budget Comm'n of Geauga Cnty.*, 12 Ohio St. 3d 126, 128, 465 N.E.2d 876 (1984).

A county law library resources board receives money from the county law library resources fund, which consists, in part, of general fund appropriations (*i.e.*, general fund moneys) made by the board of county commissioners. *See* R.C. 307.513(B); R.C. 307.514. Consequently, a county law library resources board competes for tax revenues within the ten-mill limitation allocated to subdivisions and taxing units within a county. The determinations made by the county budget commission affect the amount of tax revenue approved for each subdivision. *See* 1988 Op. Att'y Gen. No. 88-011, at 3-41. 2011 Op. Att'y Gen. No. 2011-048, at 2-383 recognized that competition for tax revenues causes a conflict of interest:

Because the amount of tax revenue generated within the ten-mill limitation is finite, the process by which such revenue is allocated creates competition between the governmental entities that are entitled to share in the distribution of the revenue. The competition is extremely intense, especially when the amount of tax revenue generated within the ten-mill limitation diminishes in times of economic distress, and makes governmental entities adversaries of each other.

As a member of the county budget commission, the county treasurer assists in adjusting the amounts budgeted by the various subdivisions, revises the estimates, and equalizes the total tax revenues available. *See* R.C. 5705.31-.32. "An argument that a subdivision is entitled to a certain level of funds means a reduced level of funds are available for [another] subdivision's use." 1996 Op. Att'y Gen. No. 96-008, at 2-33. In this circumstance, the county treasurer may be inclined to adjust the tax budgets of the other subdivisions so that the board of county commissioners has the funds needed to ensure that the county law library resources board will receive appropriations sufficient to meet the board's estimated needs. Prior opinions of the Attorney General have determined that a potential conflict of interest is present where one person who owes loyalty to two governmental entities must advocate a position on behalf of one to the potential detriment of the other. 2003 Op. Att'y Gen. No. 2003-006, at 2-36; *cf.* 1983 Op. Att'y

Gen. No. 83-035, at 2-136 (“a county treasurer who, as a member of the county budget commission, is responsible for objectively reviewing and adjusting the county’s proposed appropriations, would be subject to [an impermissible] conflict of interest if he served as a director of the county agricultural society” as the county agricultural society is competing against other county entities for the county’s tax revenue; as county treasurer, this person may be inclined to make budget decisions advantageous to the county agricultural society for which he also serves to the detriment of other county entities). *See generally* 1997 Op. Att’y Gen. No. 97-034, at 2-197 (“[a] member of the county budget commission has a duty to render unbiased determinations”).

Revisions and adjustments made by the county budget commission to the county’s tax budget or the tax budgets of other subdivisions directly affect the amount of tax money generated within the ten-mill limitation that will be allocated to the county, and ultimately to the county law library resources board as a county agency. *See* 2004 Op. Att’y Gen. No. 2004-051, at 2-441. The potential conflict of interest from competition for tax moneys and the temptation to make advantageous budget decisions renders the positions of Warren County treasurer and member of the Warren County Legal Resources Board incompatible. *See, e.g.* 1989 Op. Att’y Gen. No. 89-022, at 2-106 (“when a public position requires an individual to conduct an objective investigation or review of another entity, a conflict arises when the individual holds a second position which creates a loyalty to that entity or a predisposition toward the outcome of the review ... even if the second position does not involve direct authority over or responsibility for the matter being reviewed or investigated”); 1982 Op. Att’y Gen. No. 82-042, at 2-119 (deputy county treasurer and mayor of a municipality are incompatible as the deputy county treasurer, who serves on the county budget commission as the county treasurer’s designee, reviews the budget of the municipality in which he serves as a mayor).

Although a conflict of interest confronts a person who serves at the same time as Warren County treasurer and member of the Warren County Legal Resources Board, we must determine whether there is some means of avoiding or eliminating the conflict. We must ask whether it is possible for the county treasurer to remove himself and delegate that area of his responsibilities to another, such as a deputy county treasurer, in order to avoid the conflict. R.C. 325.17 states that a county treasurer “may appoint and employ the necessary deputies, assistants, ... or other employees for [the office of county treasurer] [and] shall fix the compensation of those employees and discharge them[.]” A deputy treasurer is appointed and compensated by the county treasurer to perform duties on the treasurer’s behalf. *See* R.C. 3.06(A) (“[a] deputy, when duly qualified, may perform any duties of his principal”); R.C. 321.04; R.C. 325.17. A county treasurer has statutory duties that are not imposed upon his employees or his deputy treasurers, and he further is responsible for the actions of his subordinates:

[t]he law goes no further than to authorize the treasurer, at his pleasure, to appoint one or more deputies, who hold their appointment only during the pleasure of the principal, who is answerable for the proceedings and misconduct of the deputy, ... and is in no sense a public officer, but a mere agent of the treasurer. [T]he statute confers authority on the deputy, during his appointment, to perform the duties of

his principal; but that falls short of charging the former with the performance of the duties of the latter.

State v. Kearns, 70 Ohio Law Abs. 71, 76-77 (C.P. Franklin County 1955). Because service upon the county budget commission is a statutory duty of the county treasurer, the chief deputy treasurer, when so directed, may perform the treasurer's duties as a member of the county budget commission. See 1934 Op. Att'y Gen. No. 3605, vol. III, p. 1721.

However, a county treasurer's delegation of specific duties to a deputy treasurer to avoid or mitigate a conflict of interest facing the county treasurer does not eliminate the possibility that the deputy treasurer may be adversely influenced by the interests of his superior. A deputy treasurer that fails to align himself with the goals and interests of the county treasurer risks the loss of his position. See, e.g., 2009 Op. Att'y Gen. No. 2009-049, at 2-371 ("it might be difficult for a member [of a county law library resources board] who also serves as an assistant county prosecutor to perform his duties and exercise his discretion in a completely objective, disinterested manner because of his position as an assistant county prosecutor" if a county prosecutor requests procurement of legal research or reference materials); 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"). A subordinate employee may be subject to influences of the county treasurer that may prevent the employee from objectively discharging duties assigned to him by the county treasurer. Hence, a county treasurer may not abstain from participating in financial matters or the exercise of his statutory duties by delegation to a subordinate to avoid a conflict of interest.

The county treasurer supervises myriad fiscal, tax, and budgetary matters of the county's subdivisions and taxing authorities. These duties are a primary function of the county treasurer that must be attended to on a regular basis. Fiscal, tax, and budgetary matters "require the exercise of independent, decision-making authority, and involve essential, nondelegable responsibilities." 2012 Op. Att'y Gen. No. 2012-008, at 2-57. As a member of the county budget commission, the responsibilities of county treasurer within that capacity requires the exercise of decision-making authority. Furthermore, recusal from ruling on particular budgets does not avoid the conflict as the "effects of the budget determinations are so interrelated that it is impossible to avoid conflict by abstaining only on one or two particular budgets." 1994 Op. Att'y Gen. No. 94-035, at 2-180. "[B]ecause the [county] budget commission has only three members, the need for [one member] to recuse himself on a constant and recurring basis from making such decisions would likely impair the functioning of the commission." *Id.*

C. Employee of the Warren County Treasurer and Member of the Warren County Legal Resources Board or Warren County Member of the Board of Trustees of the Sinclair Community College District

As an employee of the county treasurer, this person will be responsible to review county treasurer office operations and service providers, learn the day-to-day duties of other county treasurer

employees, and attend meetings and make recommendations to the county treasurer. A conflict of interest will arise for this employee if he undertakes responsibilities of the same kind that cause a conflict of interest for the county treasurer with respect to the position of member of the Warren County Legal Resources Board and the position of Warren County member of the board of trustees of the Sinclair Community College District. A person serving as county treasurer may be inclined to make budget decisions advantageous to the county law library resources board for which he also serves. This is an obvious conflict of interest. However, an employee for the county treasurer may not have responsibilities that cause him to encounter the same kind of conflict of interest between the county treasurer and member of a county law library resources board. Your communications with our office indicate that this person's duties will not include those of a deputy treasurer and it is not anticipated that he will serve on the county budget commission. The primary functions of this person serving as an employee of the county treasurer are not dictated by specific statutory provisions. Hence, as an employee of the Warren County treasurer, he will be able to abstain from any matters relating to the Sinclair Community College District and the Warren County Legal Resources Board.

Abstention from matters relating to the Sinclair Community College District or the Warren County Legal Resources Board will enable this person, as a county treasurer employee, to adhere to the principle that a public officer or employee not participate in a matter in which his objectivity might be impaired. *See* 2003 Op. Att'y Gen. No. 2003-006, at 2-39. If this person, as an employee of the county treasurer, does not participate in any discussions, deliberations, negotiations, or decisions concerning any and all matters involving the Sinclair Community College District and the Warren County Legal Resources Board, including county budget commission proceedings, it will be possible for him to eliminate a potential conflict of interest. Accordingly, an employee of the Warren County treasurer may serve simultaneously as a Warren County member of the board of trustees of the Sinclair Community College District and as a member of the Warren County Legal Resources Board, provided that in his capacity as an employee of the county treasurer, he does not participate in discussions, deliberations, negotiations, or decisions concerning matters of the Sinclair Community College District or the Warren County Legal Resources Board.

Matters Within the Purview of the Board of Professional Conduct

Your letter notes that this person is a licensed attorney and maintains a private legal practice. You have not asked about the propriety of this person practicing as an attorney while he serves as a Warren County member of the board of trustees of the Sinclair Community College District, member of the Warren County Legal Resources Board, Warren County treasurer, or employee of the Warren County treasurer. Thus, we will not consider this person's position as private attorney as part of your inquiry. However, the criteria that we have discussed in this opinion will also apply in making such an evaluation. *See, e.g.*, 1995 Op. Att'y Gen. No. 95-044, at 2-234 and 2-235 (setting forth five questions for determining whether a public and private position may be held simultaneously); 1989 Op. Att'y Gen. No. 89-037, at 2-163 and 2-164 (same).

Ohio Gov. Bar R. V § 2(D) empowers the Board of Professional Conduct¹⁰ of the Ohio Supreme Court to

issue nonbinding advisory opinions in response to prospective or hypothetical questions directed to the Board regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary of Ohio, the Ohio Rules of Professional Conduct, the Code of Judicial Conduct, or the Attorney's Oath of Office.

The Board of Professional Conduct of the Ohio Supreme Court is empowered to render opinions regarding the rules related to attorney conduct. *See* 2009 Op. Att'y Gen. No. 2009-049, at 2-369 n.4; *see also* 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph 3) (“[t]he 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 recommend that you consult with the Board of Professional Conduct of the Ohio Supreme Court for guidance concerning the ethical and professional responsibilities that will confront this attorney in his service in the various public positions that he holds or intends to hold.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. The position of Warren County member of the board of trustees of the Sinclair Community College District is compatible with the position of member of the Warren County Legal Resources Board.
2. The position of member of the Warren County Legal Resources Board is incompatible with the office of Warren County treasurer.
3. The position of Warren County member of the board of trustees of the Sinclair Community College District is incompatible with the office of Warren County treasurer.
4. An employee of the Warren County treasurer may serve simultaneously as a Warren County member of the board of trustees of the Sinclair Community College District or as a member of the Warren County Legal Resources Board provided that in his capacity as an employee of the

¹⁰ Effective January 1, 2015, the Board of Commissioners on Grievances and Discipline has been renamed the Board of Professional Conduct. *See* Ohio Gov. Bar R. V § (1)(A).

county treasurer he does not participate in discussions, deliberations, negotiations, or decisions concerning matters of the Sinclair Community College District or the Warren County Legal Resources Board.

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