

OPINION NO. 80-047**Syllabus:**

One person may serve both as the secretary-treasurer of the regional airport authority and clerk-treasurer of the board of public library trustees of a county library district.

To: Thomas A. Unverferth, Putnam County Pros. Atty., Ottawa, Ohio

By: William J. Brown, Attorney General, September 5, 1980

I have before me your letter requesting my opinion on the compatibility of the positions of secretary-treasurer of the regional airport authority and clerk-treasurer of the board of public library trustees of a county library district.

The provisions of R.C. Chapter 33 make reference to the "clerk" of the board of public library trustees. The clerk, however, is also required to perform the functions of a treasurer. R.C. 3375.36. For the purposes of this opinion I will, therefore, use the term "clerk-treasurer" to refer to this position.

In 1979 Op. Att'y Gen. No. 79-111, I set out seven questions which must be answered in any analysis of the compatibility of two such public positions. These questions are:

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

As was noted in Op. No. 79-111, questions six and seven are of local concern, and I assume, for the purposes of this analysis, that there are no departmental regulations which would prohibit one person from holding both positions.

With regard to question one, R.C. 124.57 prohibits a classified public servant from "[being] an officer in any political organization or [taking] part in politics other than to vote as he pleases and to express freely his political opinions." This language has been construed as barring a classified public servant from holding a partisan elective office. 1974 Op. Att'y Gen. No. 74-034; see Heidtman v. Shaker Heights, 163 Ohio St. 109, 118-20, 126 N.E. 2d 138, 143 (1955). Because the clerk-treasurer of the board of public library trustees is elected by the members of the board under R.C. 3375.32, and the secretary-treasurer of the regional airport authority is an appointed position, R.C. 308.04, the offices in question are not partisan elective offices in the sense encompassed by R.C. 124.57. Neither position involves party politics or campaigning by the appointee, and none of the duties carried out by the secretary-treasurer or the clerk-treasurer require involvement in party politics. The prohibition contained in R.C. 124.57 is not, therefore, applicable here.

The second question, which deals with the empowering statutes, must also be answered in the negative. The provisions creating the position of secretary-treasurer of a regional airport authority, found in R.C. 308.04, and of clerk-treasurer of a county board of public library trustees, R.C. 3375.32, do not prohibit either of these appointees of the boards from holding an additional office, with the exception that the secretary-treasurer of the regional airport authority may not be a member of the board of trustees of such authority.

The third and fourth questions are derived from the common law test of compatibility¹ set out in State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274, 276 (Cir. Ct. Franklin County 1909), as follows: "Offices are considered incompatible when one is subordinate to, or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both."

An examination of the statutes which create the positions of secretary-treasurer of the regional airport authority and clerk-treasurer of the county board of public library trustees shows no subordination of one such position to the other, nor does it indicate that one operates as a check upon the actions of the other. The board of public library trustees, of which the clerk-treasurer may be a member, is

¹As I stated in Op. No. 79-111, the common law test of compatibility is applicable to the simultaneous holding of two public offices, or of a public office and a public employment. I did not decide therein whether the rule would be applicable to two positions of public employment, and I do not make that decision herein. Since I find that there is no incompatibility between the two positions here in question, it is unnecessary to determine whether they constitute offices or employments.

responsible for the control and management of the library under R.C. 3375.22. The powers of the board, which are enumerated in R.C. 3375.40, extend to purchasing or leasing property, establishing library services and rules, hiring personnel and setting salaries. The clerk of the board of public library trustees is elected by the board members. R.C. 3375.32. R.C. 3375.36 states that the clerk "shall be the treasurer of the library funds." The secretary-treasurer of the regional airport authority is appointed by the board of trustees of the regional airport authority and does not serve as a member of that board. The duties of the secretary-treasurer are set forth in R.C. 308.12, which reads in part: "The secretary-treasurer of the regional airport authority shall be the fiscal officer of the regional airport authority and the custodian of its funds and records and shall assist the board in such particulars as it directs in the performance of its duties."

It is apparent that the powers of the library trustees are confined to matters concerning the property, services, rules and employee relations of the library. The clerk-treasurer of the board of public library trustees deals only with the financial affairs of the board. See, e.g., R.C. 3375.36 - .39. Similarly, the regional airport authority's powers under R.C. 308.06—to acquire property, fix rates and issue revenue bonds—deal exclusively with matters concerning the functioning of the airport. The secretary-treasurer is responsible only for maintaining the funds and records of the regional airport authority, and assisting in the performance of other duties of the board as directed. Therefore, it does not appear that a person appointed as secretary-treasurer of a regional airport authority would be in a position that is subordinate to, or a check upon, the clerk-treasurer of a county board of public library trustees.

The question of whether one person can physically discharge the duties of both positions is a factual issue which can only be adequately resolved by the parties involved. Factors such as the amount of time which will necessarily be devoted to each position must be considered. I have no reason to believe that, in the situation you pose, it will be impossible for a single individual to discharge the duties of both positions. Hence, for purposes of this opinion, I assume that there is no physical impossibility.

Whether there is a conflict of interest, the fifth question, is a determination integral to the common law compatibility doctrine. An officeholder should not place himself in a situation where the demands and loyalties of one position are such as to adversely affect his performance of another public office. Op. No. 79-111. In this particular instance, I am unable to find any area in which the duties of a secretary-treasurer of the regional airport authority would interfere with the performance of the duties of clerk-treasurer of the county board of public library trustees.

Therefore, it is my opinion, and you are advised, that one person may serve both as the secretary-treasurer of the regional airport authority and clerk-treasurer of the board of public library trustees of a county library district.